

2010

# Rosalind Cazares v. The Estate of Rosemary Cosby : Brief of Appellant

Utah Supreme Court

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Edward M. Garrett; James D. Garrett; Garrett and Garrett; Attorneys for Appellants.

J. Bruce Reading; Lisa A. Jones; Scalley and Reading; John B. Wilson; Laura S. Scott; Parsons, Behle and Latimer; David E. West; John N. Braithwaite; Robert C. Olsen; Plant, Wallace, Christensen and Kanell; Attorneys for Appellees.

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IN THE UTAH SUPREME COURT

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ROSALIND CAZARES, as personal  
Representative of THE ESTATE OF  
ROSEMARY COSBY,  
Plaintiff/Appellant,

Supreme Court No.: 20<sup>1</sup>~~X~~010599-SC

vs.

Civil No.: 990902004

ROBERT C. COSBY, ANNIE L.  
JOHNSON, CHASE MANHATTAN  
MORTGAGE COMPANY, HEADLANDS:  
MORTGAGE COMPANY, HEADLANDS:  
HOME EQUITY LOAN TRUST, UNITED:  
SECURITY FINANCIAL AND JOHN  
DOES 1-10,  
Defendants/Appellees,

Priority No: 15

---

HEADLANDS MORTGAGE COMPANY :  
and HEADLANDS HOME EQUITY :  
LOAN TRUST, :

Third-Party Plaintiffs/Appellees, :

vs. :

LINDA WEIR and WESTERN SURETY :  
COMPANY, :

Third-Party Defendants/Appellees. :

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BRIEF OF THE PLAINTIFF / APPELLANT

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Appeal from the Third District Court, Salt Lake County, Judge William H. Boland

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UTAH

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### LIST OF ALL PARTIES AND COUNSEL

Edward M. Garrett, #1163  
James D. Garrett, #6091  
GARRETT & GARRETT  
2091 East 1300 South, #201  
Salt Lake City, Utah 84108  
Telephone: (801) 581-1144  
Attorneys for Plaintiffs/Appellants

J. Bruce Reading, #2700  
Lisa A. Jones, #5496  
SCALLEY & READING, P.C.  
261 East 300 South, #200  
Salt Lake City, Utah 84111  
Attorneys for Defendants/Appellees, Robert C. Cosby, Annie L. Johnson, & United Security

John B. Wilson, #3511  
Laura S. Scott, #6649  
PARSONS, BEHLE & LATIMER  
201 South Main Street, #1800  
Salt Lake City, Utah 84145-0898  
Attorneys for Defendant/Appellee, Chase Manhattan Mortgage Company

David E. West, #3427  
3441 Decker Lake Drive  
Salt Lake City, Utah 84119  
Attorney for Defendant/Appellee, Headlands Mortgage Company and Headlands Home Equity Loan Trust, and Third-Party Plaintiffs/Appellants

John N. Braithwaite, #4544  
Robert C. Olsen, #8114  
PLANT, WALLACE, CHRISTENSEN & KANELL  
136 East South Temple # 1700  
Salt Lake City, Utah 84111  
Attorneys for Third Party Defendant/Appellee, Linda Weir and Western Surety Company

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## **STATEMENT OF JURISDICTION**

This Court has jurisdiction of this appeal pursuant to Section 78-2-2(j) of the Utah Code Annotated (1953) and pursuant to Rules 3 and 4 for the Utah Rules of Appellate Procedure.

## **STATEMENT OF THE ISSUES**

**A. Did the court err in setting this case for a hearing pursuant to Utah Rules of Evidence 104(a) relating to the admissibility of Plaintiff's evidence as to forgery?**

Standard of Review: Correction of Error and Abuse of Discretion.

*State v. Pena*, 869 P.2d. 932 (Utah 1994); *Kunceler v. O'Dell*, 855 P.2d. 270 (Utah Ct. App. 1993). *Crookston v. Fire Insurance Exchange*, 860 P.2d. 937 (Utah 1993); *Horton v. Carter*, 970 P.2d. 254 (Utah 1998).

Issue preserved in Lower Court by Memorandum Decision of Lower Court, dated July 11, 2001 (R. 475-478 Addendum No. 1).

**B. Did the Court err in granting Defendant's Motion in Limine, holding that the notary seal on a document was conclusive on all matters stated therein, and that no expert or other evidence of signature forgery could be introduced.**

Standard of Review: Correction of Error

*State v. Pena*, 869 P.2d. 932 (Utah 1994).

Issue preserved in Lower Court May 21, 2001 Order (R. 433-435 Addendum No. 2).

**C. Are the Findings of Fact and Conclusions of Law and Judgment of dismissal clearly erroneous without evidentiary basis?**

Standard of Review: Correction of Error



*State v. Pena*, 869 P.2d. 932 (Utah 1994).

Issue preserved in Lower Court Findings of Fact and Conclusions of Law June 28, 2001 (R.460-468 Addendum No. 3).

**D. Did the rulings of the Lower Court violate Article I Section 7, 10 and 11 of the Utah Constitution?**

Standard of Review: Correction of Error

*State v. Pena*, 869 P.2d. 932 (Utah 1994).

Issue preserved in Lower Court Motion to Vacate Orders June 12, 2001 and Order denying Motions July 11, 2001(Addendum No. 1).

**DETERMINATIVE CONSTITUTIONAL PROVISIONS AND STATUTES**

**A. Utah Constitutional Provisions**

Article I, Sections 7, 10 and 11

**B. Utah Statutes**

Revised Statues of Utah (1898), Chapter 3 Acknowledgments

Notaries Public Reform Act, § 46-1-1 *et seq.* (U.C.A 1953)

Acknowledgments, Title 57-2-1 *et seq.*

Utah Rules of Evidence, Rule 104(a) and Rule 702

## **STATEMENT OF THE CASE**

### **A. Nature of the Case**

Rosemary Cosby was a charismatic religious leader. Virtually penniless with four young children, heeding the prompting's of the spirit, she literally walked to Salt Lake City, Utah from Indianapolis, Indiana in 1961 to establish a Pentecostal Church in Salt Lake City, Utah. She named the church "Faith Temple Pentecostal Church". The church grew and prospered as did Rosemary (her name then was Walton, she was divorced). She married Defendant Robert Cosby in 1975.

During her ministry, she acquired a number of valuable parcels of real property, both in Salt Lake City and Indianapolis and established a number of businesses in both Salt Lake City and Indianapolis.

Rosemary Cosby died January 3, 1997 while visiting in Florida.

On February 11, 1997, Robert Cosby filed an application for appointment as personal representative of the Estate of Rosemary Cosby in the District Court of Salt Lake County. Probate No. 973900220ES. Robert Cosby filed Waivers of Notice in the probate Court, allegedly signed by the four children of Rosemary. Plaintiff claims that her signature on the Waiver of Notice was forged. None the less, she learned of the proceeding and intervened. She believed that her mother left a substantial estate of both real and personal property. Robert Cosby claimed that the estate was of little or no value. The Complaint alleges causes of action for forgery, fraud, conspiracy, and quiet title against the Defendant's. Each of the Defendant's answered the complaint denying the allegations.

### **B. Course of Proceedings**

The Court set the case for a scheduling conference on January 17, 2001. Following in chamber discussions between the Court and Counsel, the Court entered an order setting forth certain dates for disclosure of witnesses and documents and set a Rule 104(a) hearing for May 21, 2001 (R.254-256 Addendum 4).

Although no scheduling of motions was set forth in the scheduling order, at the pre-trial on April 13, 2001, the Court authorized Defendants to file a motion, which they claim would terminate the case (R. 355). In view of that ruling, Plaintiff orally moved the Court to continue the 104(a) hearing set for May 21, 2001. The motion was denied.

The Motion in Limine was filed and argued before the Lower Court on May 15, 2001. The Court granted the Motion, ruling that the notary seal on the questioned documents was conclusive of the matters contained in the acknowledgment and Plaintiff was precluded from introducing any expert evidence as to forgery.

On May 21, 2001, a formal Order was entered by the Court (Addendum No. 2).

On the day the Order was entered by the Court (May 21, 2001), the Court did hold a hearing, which was scheduled as a evidence Rule 104(a) hearing. However, this was merely a gesture. It was apparent the Court intended to dismiss Plaintiff's case at that hearing and it did. Plaintiff's only recourse was to proffer evidence of forgery at the hearing and the Court also entertained testimony from two (2) of the notaries involved. Following the dismissal announced by the Court on May 21, 2001, Plaintiff moved to vacate the Court orders of January 29, 2001 (Amended February 20, 2001), and the order signed and entered May 21, 2001 granting the Motion in Limine. This motion was denied by signed Minute Entry dated

July 11, 2001 (Addendum No. 1). The Findings of Fact and Conclusions of Law and Judgment were signed and entered June 28, 2001 (Addendum No. 3).

### **STATEMENT OF FACTS**

The facts developed in this case to this point in time by reason of the challenged Court orders are not extensive. Plaintiff presented her evidence by way of proffer. This evidence consists of the following:

1. Plaintiff's list and copies of forged documents and deeds, purportedly bearing the signature of Rosemary Cosby filed with the court March 11, 2001. These would be the subject of the testimony of expert George Throckmorton. (R.320-345, Addendum No. 5).

2. Report of expert George Throckmorton dated March 17, 1999 showing forgeries of the signature of Rosemary Cosby. (R.208-209, Addendum No. 6).

3. Exhibit 3, consent to appoint Robert C. Cosby as personal representative.  
Signature of Rosalind Cazares is forged.

4. Following the hearing, the Court did make Findings of Fact (Addendum No. 3).  
However, since the Court refused to entertain any evidence of forgery, lay or expert, the Courts finding that Plaintiff did not sustain her burden by clear and convincing evidence is a Catch-22. The Court said in effect, that the notary seal precludes the evidence of forgery and since Plaintiff cannot introduce such evidence, she cannot overcome the presumption afforded a notary seal.

## **SUMMARY OF ARGUMENTS**

1. The Lower Court exceeded its authority in setting this case for a mini trial pursuant to Rule 104(a) of the Utah Rules of Evidence to determine the sufficiency and relevance of Plaintiff's evidence as to forgery.

2. Following that Order, the Court later erred in ruling that no evidence of forgery (expert or otherwise) could be introduced where a document was notarized.

3. The foregoing orders denied Plaintiff due process, open Courts and right to a jury trial all in violation of Utah Constitutional provisions.

## **ARGUMENT**

### **POINT I**

#### **DID THE COURT ERR IN SETTING THIS CASE FOR A HEARING PURSUANT TO UTAH RULES OF EVIDENCE 104(a) RELATING TO THE ADMISSIBILITY OF PLAINTIFF'S EVIDENCE AS TO FORGERY?**

This point may be stated in other words: Does a trial Court have the discretion to conduct a mini trial on the relevance of expert testimony as to forgery where the qualifications of the expert and evidence is not challenged.

Evidence Rule 104(a) reads:

"Preliminary questions concerning the qualification of a person to be a witness, the existence of a privilege, or the admissibility of evidence shall be determined by the Court, subject to the provisions of Subdivision."

This rule appears to be a codification of the practice that existed in the Courts prior to its adoption. Of course a trial Court has discretion to admit and exclude evidence. That discretion is not total. As examples, evidence as to weather at the time of an accident, would have relevant bearing on the conduct of the parties and should not be excluded. Eye witness

testimony as to a crime should not be excluded. The exclusion of such evidence could result in a new trial. Evidence that a testator had given a substantial sum of money to an unacceptable religious group five years before the execution of a will would probably not be relevant on the issue of competence, at the time the will was executed

The Court ordered the 104(a) hearing at a hearing set for scheduling. The Court ordered Plaintiff to submit all documentation claimed to be forged by date certain. The initial report of George Throckmorton was already in the record. The expertise of George Throckmorton had not been challenged and in fact Defendants stipulated to his qualifications (Transcript Pg. 32, lines 12-15 from the Hearing May 21, 2001). The Court acted independently, no one had moved the Court to conduct a 104(a) hearing.

Without knowing the motivation of the Court in this regard, it is probable that the Court confused Rule 104(a) with Rule 702. That Rule reads:

“If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert opinion or otherwise.”

Rule 702 has generated a great deal of comment and the Supreme Court of the United States has weighed in with its rulings in *Daubert v. Merill Dow*, 509 US 579 (1993) and *Kumho Tire Company Ltd. v. Carmichael* 526 US 137 (1999). The subject of those cases relate primarily to the so called “junk science” Rule, where the question is whether the opinion of the expert is based upon a body of knowledge that has received some acceptance in the scientific community. This Court in the case of *State v. Rimmasch*, 775 P.2d 388 (Utah 1989) discussed in detail the admissibility of psychological evidence in a child abuse case. Based upon lack of foundation, this Court rejected the testimony of two psychologists.

No in depth analysis of so called “Junk Science” or the application of Rule 702 is involved in this case. No one questions the scientific qualifications of George Throckmorton and scientific handwriting analysis has been thoroughly accepted by the Courts for many years.

Later Orders of the Court may have rendered the 104(a) hearing moot, but none the less this point should be considered and ruled upon by this Court because if the Lower Courts of this State are adopting a practice whereby they hold a mini hearing to determine the extent and quality of Plaintiff’s evidence prior to a jury trial, that practice is not sanctioned by the laws of Utah, case Lower Court rules and should be severely circumscribed.

## **POINT II**

**DID THE COURT ERR IN GRANTING DEFENDANT’S MOTION IN LIMINE, HOLDING THAT THE NOTARY SEAL ON A DOCUMENT WAS CONCLUSIVE ON ALL MATTERS STATED THEREIN AND THAT NO EXPERT OR OTHER EVIDENCE OF SIGNATURE FORGERY COULD BE INTRODUCED?**

This point is the bedrock of Plaintiff’s appeal. Following the order setting the Rule 104(a) hearing, Plaintiff provided copies of documents alleged to be forged. These documents consist of deeds, including those mentioned in the report of George Throckmorton (Addendum No. 5 and 6) as well as additional deeds and a loan package from Chase Manhattan with a Trust Deed allegedly signed by Rosemary Cosby.

At the pretrial held April 13, 2001, Defendant announced that a Utah Statute barred expert testimony of forgery. The Court authorized and directed Defendant to file a Motion and Memorandum in Limine, which was timely filed (R. 378-384 Addendum No. 7). When this motion was authorized, Plaintiff orally requested a continuance of the mini hearing



because it was obvious that the Motion in Limine would have an impact one way or another on the issue of forgery and expert testimony. The Court denied the Motion.

The Motion in Limine was filed, together with a Memorandum in Support (Addendum No. 7). Plaintiff filed a Response in Memorandum (R. 391-399 Addendum No. 8) and Chase Manhattan filed a Memorandum in Support (R. 400-404 Addendum No. 9) and Plaintiff filed a reply to Defendant Motion in Limine (R. 408- 412 Addendum No. 10).

The Court heard the Motion on May 14, 2001. The Court granted the Motion and an Order followed. (Addendum No. 2)

By granting the Motion, the Court adopted the theory of Defendant's that Utah acknowledgment statutes prevented the introduction of evidence of forgery, lay or expert. The Statutes relied upon by Defendant's are as follows:

"The proof of the execution of any conveyance whereby real estate is conveyed or may be affected shall be:

- (1) by the testimony of a subscribing witness, if there is one; or,
- (2) when all the subscribing witnesses are dead or cannot be had, by evidence of the handwriting of the party, and of a subscribing witness, if there is one, given by a credible witness to each signature." U.C.A § 57-2-10.

"No proof by a subscribing witness shall be taken unless such witness shall be personally known to the officer taking the proof to be the person whose name is subscribed to the conveyance as a witness thereto, or shall be proved to be such by the oath or affirmation of a credible witness personally know to such officer." U.C.A. § 57-2-11.

"No proof by evidence of the handwriting of a party, or of the subscribing witness or witnesses, shall be taken unless the officer taking the same shall be satisfied that all the subscribing witnesses to such conveyance are dead, out of the jurisdiction, or cannot be had to prove the execution thereof." U.C.A. § 57-2-14.

There are no subscribing witnesses to any of the deeds or Trust Deed alleged to be forgeries. Therefore, Defendant's say that the only person who can testify as to the acknowledgment is the notary public and that the seal of the notary public is conclusive. The Lower Court agreed. The Lower Court Order in that regard is in error.

In order to fully understand Title 57, Chapter 2, all sections of the Chapter must be considered.

Title 57, Chapter 2 relates to certificates of proof of execution and provide what an officer must do before a certificate of proof can be issued. The statute speaks only of subscribing witnesses to a signature and if subscribing witnesses are dead or cannot be had, evidence of handwriting of the party, and of the subscribing witness shall be given by a credible witness to the signature of the party and of the subscribing witness.

Defendants state that there are no subscribing witnesses to any of the deeds or Trust Deed that Plaintiff claims are forgeries. Defendants then say that since the deeds bear a notary stamp that under Chapter 2 only the notary can testify. Those sections of Chapter 2 do not so state and no such meaning can be extracted for the statutory language. The sections of the chapter are in the law for a different purpose.

Chapter 2 relates to an instrument, such as a deed, where the signature of the grantor is not acknowledged by a notary and hence not recordable. In order to remedy that problem, Chapter 2 provides a method, whereby a notary, if requested, may take evidence from subscribing witnesses or third party verifying both the signature of the subscribing witness and the party. A certificate may thereupon be executed, which would entitle the document to be recorded.

Consider a fairly common example, where a parent conveys real property to her children, signs and delivers the deed, but dies before the deed can be acknowledged. The title would not be marketable because the deed could not be recorded. However, upon sufficient evidence that the signature on the deed is that of the grantor, a notary can execute a certificate pursuant to those sections of the chapter, which enable a deed to be recorded.

There is nothing in the sections, which say that a notary stamp is conclusive evidence and the only evidence that a Court can entertain on the subject of authenticity.

There is nothing stated in Chapter 2 or indeed any of the acknowledgment sections of title 57 that state that a notary public is the only person who can testify concerning the authenticity of a signature. However, that is the concept the Court adopted and it is in error.

When Chase Manhattan replied to Plaintiff's response, it stated that on the 18th day of August, 1995 that Rosemary Cosby appeared before the notary Tarci Eastburn and acknowledged the execution of their trust deed. Plaintiff believed that to be an astonishing statement because everyone knew that Rosemary Cosby was in Florida at the time recovering from surgery from a badly abscessed leg. In her reply to Chase Manhattan, Plaintiff attached a copy of a medical report from a health care provider in Florida showing treatment of Rosemary Cosby in Florida on the date she allegedly signed and acknowledged a deed of trust.

Chase Manhattan did not follow up on that matter, but rather the other Defendant's filed an Affidavit signed by Tarci Eastburn. The Affidavit is in the record (R.416). The Affidavit does not bear out the statement made by Chase Manhattan in its Memorandum. Tarci Eastburn does not remember the transaction and goes on to say that she handled a lot of transactions for Rosemary and that Rosemary sometimes signed documents before closings,

presumably out of the presence of the notary. Thus, Tarci Eastburn's swore that she had violated the law. It reads:

“Acknowledgment” means a notarial act in which a notary certifies that a signer, whose identity is personally known to the notary or proven on the basis of satisfactory evidence, has admitted, in the notary's presence, having signed a document voluntarily for its stated purpose.” U.C.A. § 46-1-2.

The Utah case which answers the questions posed in this case is that of *Northcrest, Inc. v. Walker Bank and Trust Co.* 248 P.2d 692 (Utah 1952). This case involved a deed from a mother to her son to unimproved real property in the Northeast part of Salt Lake City. Plaintiff purportedly bought the property from the son following the death of his mother. Two other children of the mother learned that their brother claimed that their mother had deeded the property to him before she died, they challenged the validity of the deed and hence Plaintiffs title. They asserted the forgery of the deed, upon 3 bases, (a) Expert testimony that the signature on the deed was not that of Lucie R. Thomas; (b) The testimony of the notary that Lucie R. Thomas did not personally appear before her, or otherwise acknowledge the deed; (c) the mother, Lucie was not in the State of Utah, at or near the time the acknowledgment was made in Salt Lake City.

“In addition to the evidence of the notary, and that the signature was not Lucie's, there is evidence that Lucie R. Thomas was not in or near Salt Lake but was in Kentucky or Florida when the deed was supposedly made. There is no doubt that the proof was sufficient to support the Court's finding that the deed was a forgery. This destroys the presumption of validity based on acknowledgment and recordation.” 248 P.2d 692

In the later Utah case of *Rasmussen v. Olsen* 583 P.2d 50 (Utah 1978), the Court held :

“The recording of a forged deed gives no notice to the world or to anybody within it of the contents thereof. Such a deed is void and even if a bona-fide purchaser from the person who altered it takes nothing by it.”

The foregoing cases state the law of Utah and are in accord with general law on the subject. On the other hand the Lower Courts ruling and decision that a notary seal is conclusive and that no evidence of forgery can be introduced constitutes a complete reversal of judicial thought. The general law on this subject is contained in 1 Am. Jur 2d

Acknowledgment § 106.

“Proof that the Certificate of Acknowledgment is false and a forgery may be sufficient, in and of itself, to establish the fact that the acknowledger did not execute the instrument”

If this Court were to affirm the Lower Court, consider the impact of such a decision. As an example, assume a party in Salt Lake City owned a valuable residential building lot. That person accepts an assignment out of the State of Utah for a period of two years. A thief scouring the community for unimproved property, finds the lot and ascertains from County Records the name of the owner. By phone he discovers that the owner is out of State and will be for 2 years. The thief goes out of state to the area where the true owner now resides, rents a mail drop and lists the property for sale. The listing agreement is forged. A purchaser is obtained for the property and closing documents are forwarded from the title company to the thief at the mail drop. The thief appears before a foreign notary with false identification and his signature is notarized. All closing papers are returned and the deed recorded. The purchase price is then mailed by the title company to the mail drop, the thief cashes the check and disappears. The true owner returns to Salt Lake City and promptly learns of the fraud and forgery and files action to quiet title. The true owner is precluded from introducing any evidence of forgery on the account of the notary seal and therefore he has no remedy. Title insurance which the purchaser would ordinarily receive is not impacted because forgery can

not be proven. It is thus seen that the Lower Court Order and decision in this case can create illogical law, causing great damage.

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In its ruling, the Court did allow for the fact that if the testimony of the notary was not credible, then evidence of forgery could be introduced. The Court failed to see that the credibility of a notary is most seriously impaired when evidence is introduced that the notary notarized a forgery. Evidence of forgery meets and overcomes the presumption of legitimacy accorded a notary seal. The Lower Court erred in ruling to the contrary. Even so, the evidence will show that the testimony and Affidavit of two (2) of the notaries in this case is not credible.

Patricia Tunson, a notary, testified for Defendants (TR47-60). She is employed by Defendant, United Security Financial and has known Rosemary Cosby for about 35 years. She testified as to Exhibit "1", a Quit-Claim Deed, bearing date of December 16, 1996, purportedly signed by Rosemary Cosby, and signed by Patricia A. Tunson as a notary. Part of her testimony is this:

Q. By Mr. Reading: And Ms. Tunson, do you recall when you signed this document ?

A: I do.

Q: I want you to tell me about on what date did you sign this document?

A: It was about --

Mr. Reading: (Mr. Garrett): Just a moment, your Honor. The document speaks for itself. It's got a date on it.

Mr. Reading: May I ask the question, your Honor.

The Court: Overruled.

Q: By Mr. Reading: About on what date did you sign the document?

A: It was around and about the 16th of December, there-about.

Q: Was Rosemary Cosby personally in front of you at the time you signed this document?

A; No, sir.

Q: Where was she?

A: She was on the telephone.

Q: And where was she physically; do you know ?

A: In Florida.

The subject of the deed came up in the telephone conversation and Tunson stated that Rosemary Cosby told her it was ok to notarize her signature.

She did not tell Rosemary Cosby that the function of the deed was to take title from herself and transfer it to she and her husband, Robert C. Cosby as joint tenants. She evidently said that the purpose of the deed was to lower an interest rate on a new loan. But she did not tell Rosemary why this deed would be necessary to accomplish this.

There is another problem with this notarization. The Stamp used to notarize the signature was not issued until 1/20/97 and the stamp could not have been made until 1/20/97. The stamp on the deed states that the commission expires 1/20/01. State law provides that a notary can not get a seal until the commission is issued. The State records show (Exhibit "10") that the Tunson commission was issued 1/20/97. That stamp did not exist on the 16th day of December, 1996, the day that Tunson says Rosemary Cosby personally appeared before her. Rosemary Cosby died January 3, 1997. Her signature on the deed is a forgery. The plain inference is somebody concocted this scheme to benefit Robert C. Cosby, following the death of his wife. Note also, that the deed was not recorded until February 11, 1997.

Tarci Eastburn notarized the purported signature of Rosemary Cosby on the Chase Manhattan Trust Deed that is part of the loan package in Exhibit "8". Her signature appears numerous times in the loan package as does the purported signature of Rosemary Cosby. All of the signatures of Rosemary Cosby are forgeries.

Defendant, Chase Manhattan, filed a Memorandum in Support of the Motion in Limine, filed by the other Defendant's (R.387). In that Memorandum, Chase Manhattan stated:

"The Chase Manhattan Trust Deed was "Subscribed and Sworn to and acknowledged by" Rosemary and Robert on August 18, 1995, before Tarci D. Eastburn, a notary public in the State of Utah."

Plaintiff knew that Rosemary was not in Utah on August 18, 1995. Others would so testify. Plaintiff responded to the Chase assertion by attaching to her response a medical record from a health care provider in Florida (R.397-399). This shows that Rosemary was in Florida recovering from a serious leg infection. Defendant's other than Chase Manhattan, then filed an Affidavit of Tarci Eastburn, which does not support Chase Manhattan's original statement to the Court. In the Affidavit, Tarci states in substance that she does not remember this transaction, but does remember that she would notarize the purported signature of Rosemary Cosby when Rosemary Cosby was not present. In both of the above documents, the notary violated Utah Law Title 57 Chapter 2(a) Recognition of Acknowledgments Act, which specifically states:

As used in this chapter:

"Acknowledged before me" means:

- (a) that the person acknowledging appeared before the person taking the acknowledgment;
- (b) that he acknowledged he executed the document;
- (c) that, in the case of:
  - (i) a natural person, he executed the document for the proposed stated in it;
  - (ii) a corporation, the officer or agent acknowledged he held the position or title set forth in the document of certificate, he signed the document on behalf of the corporation by proper authority, and the document was the act of the corporation for the purpose stated in it;



- (iii) a partnership, the partner or agent acknowledged he signed the document on behalf of the partnership by proper authority, and he executed the document as the act of the partnership for the purposes stated in it;
- (iv) a person acknowledging as principal by an attorney in fact, he executed the document by proper authority as the act of the principal for the purposes stated in it; or
- (v) a person acknowledging as a public officer, trustee, administrator, guardian, or other representative, he signed the document by proper authority, and he executed the document in the capacity and for the purposes stated in it. U.C.A. § 57-2a-2.

In Title 46 Chapter 1, Notaries Public Reform Act, it is stated:

As used in this chapter:

- (1) “Acknowledgment” means a notarial act in which a notary certifies that a signer, whose identity is personally known to the notary or proven on the basis of satisfactory evidence, has admitted, in the notary’s presence, having signed a document voluntarily for its stated purpose. U.C.A. § 46-1-2.

The meaning of those two statutes is that the person must appear, in person, before a notary. In both of the matters relating to Patricia Tunson and Tarci Eastburn, the certificates have been impeached by reason of the fact that Rosemary Cosby did not appear before either one of them. This is a violation of law and is a class B misdemeanor (U.C.A § 46-1-18(3)).

The Lower Court evidently did not agree that the credibility of the notaries had been successfully attacked because the Complaint of Plaintiff was dismissed. In this case, Plaintiff has demanded a jury. Credibility is the province of a fact finder and should not be determined by a judge in advance of trial.

The above acknowledgments appear to be acknowledgment by telephone. There are jurisdictions which accept such acknowledgments, but not where the statute requires the acknowledging party to appear in the notary’s presence as does Utah. (*see* 1 Am.Jur 2d

Acknowledgments §31, *Meyers v. Eby*, 193 P. 77 (Idaho) and *De Camp v. Allen*, 156 S. 2d 661 (Fla. App. D1).

### POINT III

#### DID THE LOWER COURT ORDERS VIOLATE ARTICLE 1, SECTIONS 7, 10 AND 11 OF THE UTAH STATE CONSTITUTION?

Those sections of Article 1 of the Utah State Constitution read as follows:

**Due Process of Law:**

“No person shall be deprived of life, liberty or property, without due process of law.” Art. I, §7

**Trial by Jury:**

“In capital cases the right of trial by jury shall remain inviolate. In Courts of general jurisdiction, except in capital cases, a jury shall consist of eight jurors. In Courts of inferior jurisdiction a jury shall consist of four jurors. In criminal cases the verdict shall be unanimous. In civil cases three-fourths of the jurors may find a verdict. A jury in civil cases shall be waived unless demanded.” Art. I, § 10

**Courts open - Redress of Injuries:**

“All Courts shall be open, and every person, for an injury done to him in his person, property or reputation, shall have remedy by due course of law, which shall be administered without denial or unnecessary delay; and no person shall be barred from prosecuting or defending before any tribunal in this State, by himself or counsel, any civil cause to which he is a party.” Art. I § 11

The above quoted sections have a common thread. They are all related to the right of a party to have his day in Court and a trial conducted under rules designed to promote fair impartial and objective legal results. The rights of a party can be violated either by the Executive, Legislative or Judicial branches of Government.

The Lower Court in our case without a Motion or any other suggestion, set a Mini Trial Hearing compelling Plaintiff to produce her evidence of forgery. The effect of such an

order is to place a Plaintiff in the position of having to prove a prima facie case before the Court will allow the Plaintiff to further proceed to a requested jury trial. Plaintiff would have to prove her case twice. Once before a judge, and depending on Court rulings made at that time, and a second time before a jury. This procedure gives the Defendant two opportunities to seek a dismissal. A basic rule of constitutional fairness was breached in this case.

#### **POINT IV**

#### **THE FINDINGS OF FACT AND CONCLUSIONS OF LAW AND JUDGMENT AND DISMISSAL ARE CLEARLY ERRONEOUS AND CLEARLY WITHOUT EVIDENTIARY BASIS.**

With reference to the Findings of Fact and Conclusions of Law (Addendum No. 3) in paragraph two the Court found that Exhibits 1, 4, 5, 6 and 7 were deeds signed by Rosemary Cosby (deceased). There is no evidence to support that finding. In paragraph 3 the Court finds that a deed conveying title from Rosemary to Rosemary and Robert as joint tenants was notarized by Patricia Tunson under date of November 16, 1996. There is no evidence that the deed was notarized on that date. The fact is it was not stamped until after Tunson received her commission on January 21, 1997. In paragraph 4 the fact is Tunson did not notarize the deed until after Rosemary Cosby died on January 3, 1997. This is conclusive evidence that Tunson's alleged notarization was not credible. In paragraph 5 this testimony was allowed over Plaintiff's hearsay objection. In paragraph 6 there is no evidence that Tunson "discovered" that the document did not have a seal. She had no legal right to affix her seal under the evidence in this case. The Court finds to the contrary. Paragraph 7 and 8 relate to three deeds notarized by Linda Weir. The three signatures are different in appearance and this finding has nothing whatever to do with the issue of forgery. The testimony that Linda Weir would

change the appearance of her signature depending on whether or not she was in a hurry is not--credible. We remind the Court that Plaintiff requested a jury and the credibility of witnesses is a jury issue. In paragraph 11 the Court finds a broad negative, namely that Rosemary Cosby never took exception to the transfer. This finding can not stand unless it were first determined that she even knew of the transfer. Paragraph 12 relates to the Chase Manhattan loan package and the proffered evidence that the signatures of Rosemary Cosby on the loan package are forgeries. It further shown that on the date the documents were purportedly signed and notarized, that Rosemary Cosby was in Florida. Furthermore, the Court found that Eastburn did not remember this transaction, but her procedure was to obtain the consent of Rosemary Cosby before notarizing any documents that had been pre-signed by Rosemary. There is no evidence in this case whatever that these documents were signed by Rosemary Cosby.

As to the Conclusions of Law, in paragraph 3, the Court concludes that Plaintiff did not sustain its burden of showing by clear and convincing evidence that any of the notaries public lack credibility. Plaintiff proved the lack of credibility of three (3) of the notaries. Even further, credibility should not have been an issue for the Court. Ultimately that should have been an issue for the jury. In paragraph 4, the Court concluded that Rosemary Cosby signed Exhibit 7 and then found that she took no action for seven (7) years to correct the situation. There is no evidence in this case that Rosemary Cosby even knew of the deed and the Defendant's have not asserted any affirmative defenses in this action such as a estoppel.

The Court then concludes that no clear and convincing proof was presented of forgery. Plaintiff proffered conclusive evidence of forgery by expert opinion. No evidence to the contrary was offered by Defendants. However, the Court had already ruled that it would not

accept evidence of forgery if a document were notarized. Curiously, the Court appears to be saying that it would not accept evidence of forgery and since Plaintiff did not prove forgery by clear and convincing evidence, that the case should be dismissed.

The Court goes on to conclude that without proof of forgery, Plaintiff's other claims of common law fraud, conversion and conspiracy must fail. The Court does not explain how those issues are related to the forgery issues. They may or may not factually relate to the issue of forgery.

This is an unwarranted and erroneous decision.

### **CONCLUSION**

There is nothing in the Utah Statutes, Case Law or Rules that permit a Court to conduct a mini hearing in the guise of evidence Rule 104(a). None of the parties in this action requested such a hearing and Plaintiffs proof of forgery which would be established by expert George Throckmorton had not been challenged. Proof of forgery alone should satisfy the burden of overcoming the presumption of legitimacy of a notary seal. Even so, Plaintiff established a lack of credibility of the notaries Patricia Tunson and Tarci Eastburn. In both cases they testified to a violation of Utah Acknowledgment and Notaries Statutes.

This case must be reversed and returned to the District Court for trial.

RESPECTFULLY submitted this 19<sup>th</sup> day of November, 2001.

GARRETT & GARRETT

By:   
Edward M. Garrett

**CERTIFICATE OF MAILING**

I hereby certify that on this 9<sup>th</sup> day of November, 2001, a true and correct copy of the foregoing APPELLATE BRIEF was mailed, post pre-paid to the following:

J. Bruce Reading  
Lisa A. Jones  
SCALLEY & READING, P.C.  
261 East 300 South, #200  
Salt Lake City, Utah 84111

John B. Wilson  
Laura S. Scott  
PARSONS, BEHLE & LATIMER  
201 South Main Street, #1800  
Salt Lake City, Utah 84145-0898

David E. West  
3441 Decker Lake Drive  
Salt Lake City, Utah 84119

John N. Braithwaite  
Robert C. Olsen  
PLANT, WALLACE, CHRISTENSEN & KANELL  
136 East South Temple # 1700  
Salt Lake City, Utah 84111

A handwritten signature in cursive script, appearing to read "Jane Anderson", is written over a horizontal line.

## **ADDENDUM**

<b>ADDENDUM</b>	<b>DOCUMENT</b>
<b>1</b>	<b>Minute Entry and Order of July 11, 2001</b>
<b>2</b>	<b>Order of May 21, 2001</b>
<b>3</b>	<b>Findings of Fact and Conclusions of Law of June 28, 2001</b>
<b>4</b>	<b>Order of January 25, 2001</b>
<b>5</b>	<b>Copies of Documents Bearing the Forged Signature of Rosemary Cosby of March 11, 2001</b>
<b>6</b>	<b>Report of Expert George Throckmorton dated March 17, 1999</b>
<b>7</b>	<b>Motion in Limine of April 18, 2001</b>
<b>8</b>	<b>Response to Motion in Limine of May 1, 2001</b>
<b>9</b>	<b>Defendant Chase Manhattan Mortgage Reply Memorandum in Support of Motion in Limine of May 3, 2001</b>
<b>10</b>	<b>Reply to Plaintiff's Response to Defendant Cosby's Motion in Limine of May 7, 2001</b>

## ADDENDUM NO. 1



**FILED DISTRICT COURT**  
Third Judicial District

JUL 11 2001

SALT LAKE COUNTY

By [Signature]  
Deputy Clerk

**IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT**

**IN AND FOR SALT LAKE COUNTY, STATE OF UTAH**

-----

ROSALIND CAZARES, as co-personal:	MINUTE ENTRY AND ORDER
representative of THE ESTATE OF	
ROSEMARY COSBY,	CASE NO. 990902004

Plaintiff, :

vs. :

ROBERT C. COSBY, ANNIE L. :  
JOHNSON, CHASE MANHATTAN :  
MORTGAGE COMPANY, HEADLANDS :  
MORTGAGE COMPANY, HEADLAND HOME :  
EQUITY LOAN TRUST, UNITED :  
SECURITY FINANCIAL and JOHN :  
DOES 1-10, :

Defendants. :

----- :  
HEADLANDS MORTGAGE COMPANY and :  
HEADLAND HOME EQUITY LOAN TRUST, :

Third Party Plaintiffs, :

vs. :

LINDA WEIR and WESTERN SURETY :  
COMPANY, :

Third Party Defendants. :  
-----

Before the Court is plaintiff's Motion to Vacate Orders, submitted on plaintiff's June 12, 2001, Request for Ruling. Having considered the parties' Memoranda and good cause appearing, the Motion is denied. Consistent with the arguments of defendant Cosby and Chase Manhattan Mortgage Company, it is the Court's view that

plaintiff's Motion is fatally defective for the following procedural and substantive reasons:

1. The Motion was not filed within five days of the service of the proposed Order on plaintiff. Consequently, the Motion is untimely.

2. The Motion to Vacate does not appear to rely upon Rule 60(b), and provides no persuasive basis allowed under the rule to vacate the Order.

3. Rule 104(a) of the Utah Rules of Evidence provides that preliminary questions concerning the "admissibility of evidence" shall be determined by the court. Under this rule the Court has the responsibility to be a gatekeeper in determining what evidence will go to a jury. It is the Court's view that a determination of the evidentiary basis for a claim of forgery, under the applicable law, is precisely the purpose of such a rule.

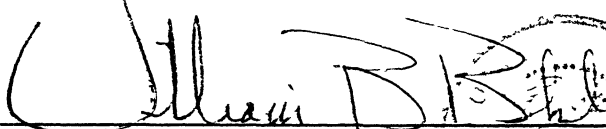
4. Sections 57-2-10, 57-2-14, and 57-4a-4 require that proof of execution in any conveyance of real estate be made by the testimony of subscribing witnesses. Only if the subscribing witness is dead or unavailable may the evidence of handwriting of a party be introduced. These provisions do not allow proof of handwriting to establish forgery on a deed unless the notaries who acknowledged them were unavailable. The notaries appeared at the hearing and testified to the signature on the deeds. No evidence

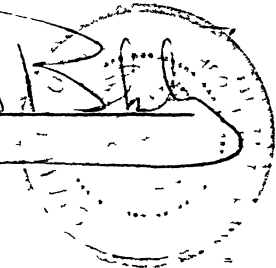
was adduced at the hearing to establish misconduct on the part of the notaries necessary to overcome the clear requirements of the statute.

5. The reference in the May 21<sup>st</sup> Order to a Rule 401 hearing as opposed to the reference in the January 29<sup>th</sup> Order to a Rule 104(a) hearing was clearly a typographical error. Plaintiff signed the May 21<sup>st</sup> Order and failed to make any objection to the discrepancy then or at any time prior to the hearing. In failing to do so, plaintiff waived any objection she may otherwise have had.

For all of the foregoing reasons, the Court has denied the Motion.

Dated this 11 day of July, 2001.

  
WILLIAM B. BOHLING  
DISTRICT COURT JUDGE



MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing Minute Entry and Order, to the following, this 11 day of July, 2001:


Edward M. Garrett  
Attorney for Plaintiff  
2091 East 1300 South, Suite 201  
Salt Lake City, Utah 84108

J. Bruce Reading  
Lisa A. Jones  
Attorneys for Defendants Cosby, Johnson,  
and United Security  
261 East 300 South, Suite 200  
Salt Lake City, Utah 84111

David E. West  
Attorney for Defendant Headlands  
3441 S. Decker Lake Drive  
Salt Lake City, Utah 84119

John B. Wilson  
Laura S. Scott  
Attorneys for Defendant Chase Manhattan  
201 S. Main, Suite 1800  
P.O. Box 45898  
Salt Lake City, Utah 84145-0898

John N. Braithwaite  
Attorney for Third Party Defendant  
136 E. South Temple, Suite 1700  
Salt Lake City, Utah 84111



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## **ADDENDUM NO. 2**

MAY 21 2001

SALT LAKE COUNTY

By DST  
Deputy Clerk

J. Bruce Reading (#2700)  
Lisa A. Jones (#5496)  
SCALLEY & READING, P.C.  
Attorneys for Defendants, Cosby, Johnston & United Security  
261 East 300 South, Suite 200  
Salt Lake City, Utah 84111  
Telephone: (801) 531-7870  
Facsimile: (801) 531-7968

IN THE THIRD JUDICIAL DISTRICT COURT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

ROSALIND CAZARES, as co-personal  
Representative of THE ESTATE OF ROSEMARY  
COSBY,

Plaintiff,

vs.

ROBERT C. COSBY, ANNIE L. JOHNSON, CHASE  
MANHATTAN MORTGAGE COMPANY,  
HEADLANDS MORTGAGE COMPANY,  
HEADLAND HOME EQUITY LOAN TRUST,  
UNITED SECURITY FINANCIAL and JOHN  
DOES 1-10,

Defendants.

HEADLANDS MORTGAGE COMPANY and  
HEADLAND HOME EQUITY LOAN TRUST,

Third-Party Plaintiffs,

vs.

LINDA WEIR and WESTERN SURETY  
COMPANY,

Third-Party Defendants.

ORDER

Civil No. 990902004

Judge William B. Bohling

Defendants Robert C. Cosby, Annie L. Johnson, United Security Financial, and Headlands  
~~Chase Manhattan Mortgage Corporation's~~  
Mortgage Company and Headlands Home Equity Loan Trust's Motion in Limine was brought on

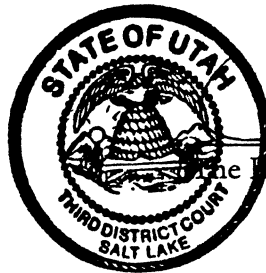
for hearing before the Honorable William B. Bohling, Judge in the above-entitled Court with the Defendants Cosby, Johnson, and United Security Financial appearing through their authorized representatives and their attorney of record, J. Bruce Reading and the Third-Party Plaintiffs ~~Headlands Mortgage Company and Headland Home Equity Loan Trust~~ *Chall Ma Latta Mortgage Corporation*, not appearing through an authorized representative but appearing through its attorney, Laura S. Scott, and the Plaintiffs appearing in person and with their attorney of record Edward Garrett, the Court having heard arguments and reviewed memoranda on file and being fully advised of the premises enters the following Order:

1. The Movants are requesting the Court to not allow any testimony of a handwriting expert while the testimony of a subscribing notary is available to be heard by the Court.
2. The Court finds that the controlling statutes in this case are Utah Code Ann. § 57-2-10 and § 57-2-14.
3. The Court interprets these sections of the law to preclude any expert testimony as to the handwriting of Rosemary Cosby, so long as the notary public is able to testify.
4. The Court does find that if the Plaintiffs can show the Court by clear and convincing evidence that the notary public whose testimony is to be heard by the Court is not credible for any reason, then expert testimony as to handwriting may be admitted.
5. Until such time as clear and convincing evidence is presented to the Court at the pending 401 hearing scheduled for May 21, 2001 or otherwise no testimony from a

handwriting expert will be allowed so long as the notary public who attested to any document is available to testify at Court.

DATED this 21 day of May, 2001.

BY THE COURT:



William B. Bohling  
The Honorable William B. Bohling

Approved as to form:

John B. Wilson  
Laura S. Scott

David E. West  
David E. West

Edward M. Garrett  
Edward M. Garrett

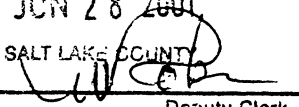
John N. Braithwaite  
John N. Braithwaite



## ADDENDUM NO. 3

**FILED DISTRICT COURT**  
Third Judicial District

J. Bruce Reading (#2700)  
Lisa A. Jones (#5496)  
SCALLEY & READING, P.C.  
Attorneys for Defendants, Cosby, Johnston & United Security  
261 East 300 South, Suite 200  
Salt Lake City, Utah 84111  
Telephone: (801) 531-7870  
Facsimile: (801) 531-7968

JUN 28 2001  
SALT LAKE COUNTY  
By   
Deputy Clerk

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IN THE THIRD JUDICIAL DISTRICT COURT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

---

ROSALIND CAZARES, as co-personal  
Representative of THE ESTATE OF ROSEMARY  
COSBY,

Plaintiff,

vs.

ROBERT C. COSBY, ANNIE L. JOHNSON, CHASE  
MANHATTAN MORTGAGE COMPANY,  
HEADLANDS MORTGAGE COMPANY,  
HEADLAND HOME EQUITY LOAN TRUST,  
UNITED SECURITY FINANCIAL and JOHN  
DOES 1-10,

Defendants.

---

HEADLANDS MORTGAGE COMPANY and  
HEADLAND HOME EQUITY LOAN TRUST,

Third-Party Plaintiffs,

vs.

LINDA WEIR and WESTERN SURETY  
COMPANY,

Third-Party Defendants.

---

**FINDINGS OF FACT AND  
CONCLUSIONS OF LAW**

Civil No. 990902004

Judge William B. Bohling

THE ABOVE-ENTITLED MATTER came on for a 104 evidentiary hearing before the Honorable William B. Bohling on the 21<sup>st</sup> day of May, 2001. The Plaintiff appeared in person with her attorney of record, Edward Garrett. The Defendant, Robert C. Cosby, did not appear in person, but the Defendant Annie L. Johnson, appeared for herself and as a representative of United Security Financial, and Linda Weir appeared in person, all of these Defendants being represented by J. Bruce Reading. The Defendant, Chase Manhattan Mortgage Corporation, appeared through their attorney of record, Laura S. Scott. The Defendant, Headlands Home Equity Loan Trust, appeared through its authorized attorney, David E. West. Western Surety Company appeared through its attorney of record, John N. Braithwaite. On the 7<sup>th</sup> day of January, 2001, the Court held a scheduled conference wherein a hearing was set pursuant to Rule 104 of the Utah Rules of Evidence to determine the admissibility of evidence to support Plaintiff's contention of forgery. Prior to this hearing, Defendants brought a Motion in Limine that was heard and ruled upon wherein the Court found that unless evidence could be adduced by the clear and convincing standard that a notary public's attestation was not credible, then pursuant to Utah Code Ann. §§ 57-2-10 and 57-2-14, no expert witness testimony as to handwriting could be introduced. The Court then took testimony and heard proffer and argument of the parties and being fully advised in the premises enters the following

#### **FINDINGS OF FACT**

1. The parties are residents of or doing business within Salt Lake County, State of Utah.
2. Plaintiff introduced Exhibits 1, 4, 5, 6, and 7, all of which purport to be deeds that have been filed with the County Recorder's Office of Salt Lake County and signed by Rosemary Cosby, deceased, before notary publics of the State of Utah.

3. All these documents claimed to be forgeries as to the signature of Rosemary Cosby. Plaintiff's Exhibit 1 was notarized by Patricia Tunsen under a date of the 16<sup>th</sup> of December, 1996.

4. The only evidence offered by Plaintiff with respect to the notarization of Exhibit 1 was that Patricia A. Tunsen affixed her seal that was given to her after an award of her new commission late in January of 1997, but before the document was recorded on February 11, 1997. Testimony was given by Patricia Tunsen that at the time she notarized Plaintiff's Exhibit 1 that she was on the phone with Rosemary Cosby while Ms. Cosby was in Florida. Ms. Tunsen had a 30-year friendship with Ms. Cosby and asked her if Ms. Cosby wanted Ms. Tunsen to notarize the Quit-Claim Deed on Ms. Cosby's marital residence.

5. Further testimony showed that Ms. Tunsen received an affirmative response from Ms. Cosby and she signed the document but neglected to affix her seal at that time.

6. Ms. Tunsen discovered that the document did not have a seal affixed when it came time to record the document and she affixed her new seal at the time of the discovery.

7. Plaintiff's Exhibits 4, 5 and 6 are copies of quit-claim deeds notarized by Linda Weir. The only evidence offered by Plaintiff with respect to the notarization of Exhibits 4, 5, and 6 is that the signature of Linda Weir appeared to be different on each of the three documents.

8. Ms. Weir was called to testify and identified that, in fact, each of the signatures was hers and the reason that they appeared to be different in appearance was based upon the speed in which she signed her name or how she chose to sign her name on that particular day. But in any case, Ms. Weir's testimony was clear that the signatures were hers.

9. Plaintiff's Exhibit 7 is a deed signed by Rosemary Cosby and notarized by Janet A. Martin on the 27<sup>th</sup> of November, 1989. Proffer of testimony was made by Plaintiff that Rosemary Cosby was not physically present in Salt Lake City when this notarization took place. Plaintiff did not introduce any documentary evidence to support this proffer.

10. Janet M. Martin is alive and able to testify but Plaintiff did not call her to testify and she did not appear at this hearing. Proffer was made however that the property conveyed by this deed was conveyed to the Faith Temple Pentacostal Church because the property contained the commissary for the Church. The intention was to have the Church own the property so it might be tax exempt.

11. This property was conveyed eight (8) years prior to the death of Rosemary Cosby and, proffer of testimony was that Mrs. Cosby never took exception to the transfer.

12. Plaintiff attempted to place into evidence the documentation package from the Defendant, Chase Manhattan, on the Deer Hollow property which property was the marital residence of Rosemary and Robert Cosby. Plaintiff alleged that at the time these documents were notarized, Rosemary Cosby was in Florida. The only evidence offered in support of this was a document purporting to be a medical record from a doctor in Florida. Plaintiff did not call the custodian of the record to establish the foundation for the document. At a prior hearing, the Court accepted an affidavit from Tarci D. Eastburn who was a notary public for a escrow company in Salt Lake City at the time these documents were notarized. In that affidavit Ms. Eastburn recited that while this particular transaction could not be specifically remembered, that her normal procedure was that she would obtain the consent of Ms. Cosby before notarizing any documents that had been

pre-signed by Ms. Cosby. Further, this document package was for the first mortgage on the marital residence of the parties in which Rosemary Cosby made payments to Chase Manhattan for approximately eighteen (18) months after the signing of these documents and before her death.

13. Based upon the ruling on these documents during the Motion in Limine, the exhibits were not admitted.

From the foregoing Findings of Fact, the Court now enters its

#### **CONCLUSIONS OF LAW**

1. The parties are all residents of or doing business in Salt Lake County, State of Utah and all actions relevant hereto transpired within said county.

2. The Court finds that the controlling statutes are Utah Code Ann. §§ 57-2-10, 57-2-14, 57-4A-4, and Rule 104 of the Utah Rules of Evidence.

3. Rule 104 allows the Court to rule on the admissibility of evidence that is ultimately to be presented to the finder of fact. The Court finds that the facts presented to the Court do not meet the burden of clear and convincing evidence that any of the notaries public attestation lack credibility.

4. The fact that Rosemary Cosby took no action from the signing of Plaintiff's Exhibit 7 to her death in 1997 forecloses the attempts of the Plaintiff to now claim forgery. Seven years elapsed which would have afforded ample opportunity for Mrs. Cosby to establish that property once in her name is no longer in her name and take action to correct the situation. This she did not do – nor can now the Plaintiff.

5. The presumptions afforded recorded documents as described in Utah Code Ann. § 57-4A-4 cannot with the evidence presented be rebutted.

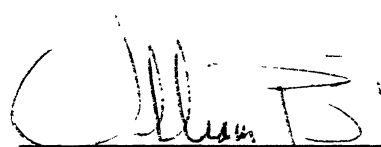
6. No evidence has been presented that can establish by clear and convincing proof that any forgery of any of Plaintiff's exhibits has occurred.

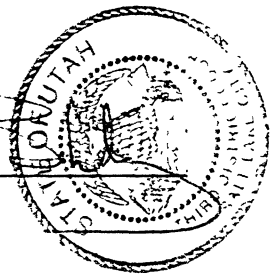
7. Without such proof Plaintiff's claims quieting title to all properties which are the subject matter of Plaintiff's Complaint as well as their claims of common law fraud and conversion must fail as no cause of action.

8. Without fraud or conversion Plaintiff's cause of action in civil conspiracy must fail as no cause of action.


DATED this 28 day of June 2001.

BY THE COURT:

  
William B. Bohling  
District Court Judge



Approved as to form:

  
John B. Wilson  
Laura S. Scott

6-8-01


Date

\_\_\_\_\_  
David E. West

\_\_\_\_\_  
Date





  
Edward M. Garrett Date 6/

\_\_\_\_\_  
John N. Braithwaite Date

**MAILING CERTIFICATE**

I hereby certify that I mailed, postage prepaid, a true and exact copy of the foregoing

**FINDINGS OF FACT AND CONCLUSIONS OF LAW** to the following party on the 6<sup>th</sup>

day of June 2001:

John B. Wilson  
Laura S. Scott  
Parsons Behle & Latimer  
Attorneys for Chase Manhattan  
201 South Main Street #1800  
Salt Lake City, Utah 84145-0898

David E. West  
Attorney for Headlands  
3441 South Decker Lake Drive  
Salt Lake City, Utah 84119

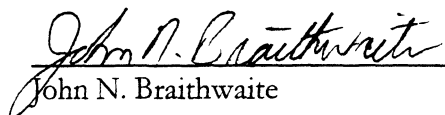
Edward M. Garrett  
Garrett & Garrett  
Attorney for Plaintiff  
2091 East 1300 South #201  
Salt Lake City, Utah 84108

John N. Braithwaite  
Plant Wallace  
Attorney for Third Party Defendant  
136 E. S. Temple, #1700  
Salt Lake City, Utah 84111

  
\_\_\_\_\_  
Susan L. Patton

Edward M. Garrett

Date

  
John N. Braithwaite

6-7-01

Date

**MAILING CERTIFICATE**

I hereby certify that i mailed, postage prepaid, a true and exact copy of the foregoing

**FINDINGS OF FACT AND CONCLUSIONS OF LAW** to the following party on the 6th

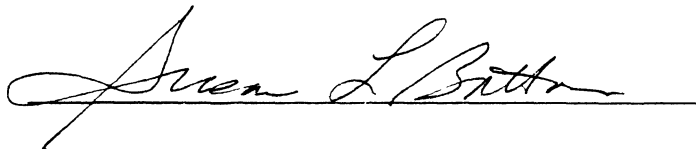
day of June 2001:

John B. Wilson  
Laura S. Scott  
Parsons Behle & Latimer  
Attorneys for Chase Manhattan  
201 South Main Street #1800  
Salt Lake City, Utah 84145-0898

David E. West  
Attorney for Headlands  
3441 South Decker Lake Drive  
Salt Lake City, Utah 84119

Edward M. Garrett  
Garrett & Garrett  
Attorney for Plaintiff  
2091 East 1300 South #201  
Salt Lake City, Utah 84108

John N. Braithwaite  
Plant Wallace  
Attorney for Third Party Defendant  
136 E. S. Temple, #1700  
Salt Lake City, Utah 84111




## **ADDENDUM NO. 4**

**FILED DISTRICT COURT**  
Third Judicial District

JAN 29 2001

SALT LAKE COUNTY

By   
Deputy Clerk

J. Bruce Reading (#2700)  
Lisa A. Jones (#5496)  
SCALLEY & READING, P.C.  
Attorneys for Defendants, Cosby, Johnston & United Security  
261 East 300 South, Suite 200  
Salt Lake City, Utah 84111  
Telephone: (801) 531-7870  
Facsimile: (801) 531-7968

**IN THE THIRD JUDICIAL DISTRICT COURT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH**

ROSALIND CAZARES, as co-personal  
Representative of THE ESTATE OF ROSEMARY  
COSBY,

Plaintiff,

vs.

ROBERT C. COSBY, ANNIE L. JOHNSON, CHASE  
MANHATTAN MORTGAGE COMPANY,  
HEADLANDS MORTGAGE COMPANY,  
HEADLAND HOME EQUITY LOAN TRUST,  
UNITED SECURITY FINANCIAL and JOHN  
DOES 1-10,

Defendants.

HEADLANDS MORTGAGE COMPANY and  
HEADLAND HOME EQUITY LOAN TRUST,

Third-Party Plaintiffs,

vs.

LINDA WEIR and WESTERN SURETY  
COMPANY,

Third-Party Defendants.

**ORDER**

Civil No. 990902004

Judge William B. Bohling

THE ABOVE-ENTITLED MATTER came on for scheduling conference on the 17<sup>th</sup> day of

January, 2001, with Edward M. Garret appearing for the Plaintiff, J. Bruce Reading appearing for the

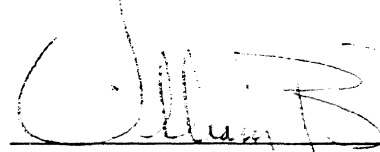
Defendants, Cosby, Johnston & United Security, Laura S. Scott appearing for Chase Manhattan Mortgage Company, David E. West appearing for Defendant, Headland Home Equity Loan Trust, and no one appearing for the Third-Party Defendant, Western Surety Company.

Based upon the fact that John Braithwaite, attorney for the Third Party Defendant, Western Surety Company had not received notice of this hearing, all dates are subject to his review and agreement. The Court has set the following dates:

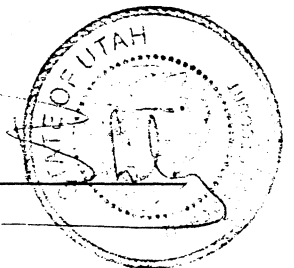
1. Plaintiff is to designate all expert and lay witnesses on or before **February 2, 2001**.
2. Defendants are to designate all lay or expert witnesses on or before **February 28, 2001**.
3. Plaintiff is to disclose and produce copies of all documents alleged to be forged.
4. An in-court pre-trial will be held on **April 13, 2001, at 11:45 a.m.**
5. **December 14, 2001**, will be the discovery cut-off on the forgery issue.  
*Rule 104(c) of the Utah Rules of Evidence*
6. A ~~401~~ hearing will be held commencing at **9:00 a.m., May 21, 2001**. A day has been set aside for this hearing.
7. On **May 29, 2001**, an in-court scheduling conference will be held at **9:00 a.m.**

DATED this 25 day of January 2001.

BY THE COURT:



William B. Bohling  
District Court Judge



**MAILING CERTIFICATE**

I hereby certify that I mailed, postage prepaid, a true and exact copy of the foregoing

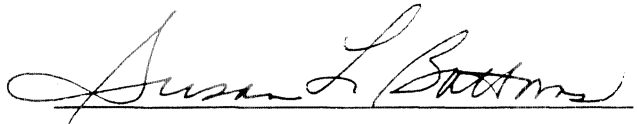
**ORDER** to the following party on the 22 day of January 2001:

John B. Wilson  
Laura S. Scott  
Parsons Behle & Latimer  
Attorneys for Chase Manhattan  
201 South Main Street #1800  
Salt Lake City, Utah 84145-0898

David E. West  
Attorney for Headlands  
3441 South Decker Lake Drive  
Salt Lake City, Utah 84119

Edward M. Garrett  
Garrett & Garrett  
Attorney for Plaintiff  
2091 East 1300 South #201  
Salt Lake City, Utah 84108

John N. Braithwaite  
Plant Wallace  
Attorney for Third Party Defendant  
136 E. S. Temple, #1700  
Salt Lake City, Utah 84111



## ADDENDUM NO. 5

Edward M. Garrett #1163  
GARRETT & GARRETT  
2091 East 1300 South, Ste. 201  
Salt Lake City, Utah 84108  
Telephone (801) 581-1144  
Facsimile (801) 581-1168

CITING

*[Handwritten signature]*

IN THE THIRD JUDICIAL DISTRICT COURT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

ROSALIND CAZARES, as Co-personal  
Representative of THE ESTATE OF  
ROSEMARY COSBY,

Plaintiff,

vs.

ROBERT C. COSBY, ANNIE L.  
JOHNSON, CHASE MANHATTAN  
MORTGAGE CORPORATION,  
HEADLANDS HOME EQUITY LOAN,  
TRUST, UNITED SECURITY  
FINANCIAL, and JOHN DOES 1-10,

Defendants,

COPIES OF DOCUMENTS BEARING  
THE FORGED SIGNATURE OF  
ROSEMARY COSBY

Case No.: 990902004

Judge: William B. Bohling

HEADLANDS MORTGAGE COMPANY:  
And HEADLANDS HOME EQUITY:  
LOAN TRUST,:

Third-Party Plaintiffs,

vs.

LINDA WEIR and WESTERN SURETY  
COMPANY,

Defendants.



Copies of documents bearing the forged signature of Rosemary Cosby are attached as follows:

1. SWD August 24, 1988-North 19' of lot 8 and all of lots 9 & 10, Glendale addition.
2. Two – QCDs Lot 2 Huntsman Plat “A”.
3. All documents purportedly signed by Rosemary Cosby supplied by Chase Manhattan and response to Rule 34 request. These are voluminous and have not been produced. These documents are available for inspection by counsel at the office of Plaintiffs counsel upon request.
4. QCD Lot 49 WestPoint.
5. QCD Unit 905 B Zions Summit and Condo.
6. QCD Lot 26 block 2 Coates and Corum Sub.
7. QCD Lot 260 Park Crest #2.
8. QCD Lot 898 DevonRidge, Marion County, Indiana.
9. TD 11-2-94 beneficiary United Security Financial Inc. Lot 2 Huntsman Plat “A”.
10. Mortgage – Dollar Mortgage Corporation of California - 1123 Laurelwood, Carmel, Indiana.
11. Mortgage – United Security Financail – Lot 898 Devon Ridge Marion County Indiana.
12. Two – TDs - Unit No. 905 B, Zions Summit Condo.

GARRETT & GARRETT

By James D. Garrett for  
Edward M. Garrett Edward

CERTIFICATE OF MAILING

I hereby certify on this 11 day of March, 2001, I caused to mailed, first class, postage prepaid, a true and correct copy of the foregoing COPIES OF DOCUMENTS BEARING THE FORGED SIGNATURE OF ROSEMARY COSBY to:

Laura S. Scott  
John B. Wilson  
201 South Main Street, Suite 1800  
P.O. Box 45898  
Salt Lake City, Utah 54145-0898

David E. West  
261 East 300 South, Suite 200  
Salt Lake City, Utah 84111

John N. Braithwatie  
Plant Wallace  
Attorney for Third Party Defendant  
136 East South Temple, #1700  
Salt Lake City, Utah 84111

James D. Garrett

4667469

Recorded at Request of \_\_\_\_\_  
 at \_\_\_\_\_, M. Fee Paid \_\_\_\_\_  
 by \_\_\_\_\_ Dep. Book \_\_\_\_\_ Page \_\_\_\_\_ Ref.: \_\_\_\_\_  
 Mail tax notice to Hantler Address 1035 W. Indiana Ave.  
Salt Lake, UT.

## SPECIAL WARRANTY DEED

[CORPORATE FORM]

FAITH TEMPLE PENTECOSTAL CHURCH AND ROSEMARY COSBY, a corporation  
 organized and existing under the laws of the State of Utah, with its principal office at  
 \_\_\_\_\_, of County of SALT LAKE, State of Utah,  
 grantor, hereby CONVEYS AND WARRANTS against all claiming by, through or under it to  
 ROY C. JOHNSON, ANNIE L. JOHNSON, AND THE FAITH TEMPLE PENTECOSTAL CHURCH

grantee  
 of SALT LAKE CITY, UTAH for the sum of  
 TEN DOLLARS AND NO/100's AND OTHER GOOD AND VALUABLE CONSIDERATION\*\*\*\* DOLLARS  
 the following described tract of land in SALT LAKE County,  
 State of Utah:

The North 19 feet of Lot 8 and all of Lots 9 and 10, Block 10, Glendale  
 addition. Also Beginning at the Northwest corner of Lot 9, said Block 10:  
 North 89°53'01" East 115 feet; North 68°05' East 50 Feet; North 16°59'06"  
 East 46.8 feet; South 74°52'32" West 165.04 feet; Southwesterly along a curve  
 to left 27.86 feet to beginning. Less that portion deed to the Provo-Jordan  
 River Parkway authority.

4667469  
 24 AUGUST 88 04:12 PM  
 KATIE L. DIXON  
 RECORDER, SALT LAKE COUNTY, UTAH  
 GUARDIAN TITLE  
 REC BY: GORDON SINFIELD, DEPUTY

The officers who sign this deed hereby certify that this deed and the transfer represented  
 thereby was duly authorized under a resolution duly adopted by the board of directors of the  
 grantor at a lawful meeting duly held and attended by a quorum.

In witness whereof, the grantor has caused its corporate name and seal to be hereunto affixed  
 by its duly authorized officers this 24th day of AUGUST, A. D. 19 88

Attest:

THE FAITH TEMPLE PENTECOSTAL CHURCH

By

Secretary.

President.

[CORPORATE SEAL]

STATE OF UTAH,

County of SALT LAKE

On the 24th day of AUGUST, A. D. 1988  
 personally appeared before me \_\_\_\_\_ and  
 who being by me duly sworn did say, each for himself, that he, the said \_\_\_\_\_  
 is the president, and he, the said \_\_\_\_\_ is the secretary  
 of \_\_\_\_\_, and that the within and foregoing  
 instrument was signed in behalf of said corporation by authority of a resolution of its board of  
 directors and said \_\_\_\_\_ and  
 each duly acknowledged to me that said corporation executed the same and that the seal affixed  
 is the seal of said corporation.

Notary Public.

My commission expires \_\_\_\_\_

My residence is \_\_\_\_\_

200K 6058 MC1557

78160

*Rosemary Cosby*

ROSEMARY RADFORD COSBY, PRESIDENT

*Lois Johnson*

LOIS JOHNSON, SECRETARY

*Robert C. Cosby*

ROBERT C. COSBY, VICE PRESIDENT

*Debbie Cosby*

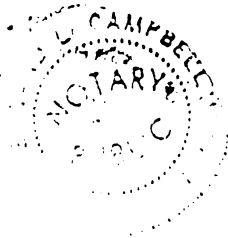
DEBBIE COSBY, TREASURER

STATE OF UTAH  
COUNTY OF SALT LAKE

ON THE 24th DAY OF AUGUST, A.D. 1988, PERSONALLY APPEARED BEFORE ME ROSEMARY RADFORD COSBY, WHO BEING BY ME DULY SWORN, SAYS THAT SHE IS THE PRESIDENT OF THE FAITH TEMPLE PENTECOSTAL CHURCH AND ROBERT C. COSBY, SHO BEING BY ME DULY SWORN, SAYS THAT HE IS THE VICE PRESIDENT OF THE FAITH TEMPLE PENTECOSTAL CHURCH AND LOIS JOHNSON, SHO BEING BY ME DULY SWORN, SA'YS THAT SHE IS THE SECRETARY OF THE FAITH TEMPLE PENTECOSTAL CHURCH AND DEBBIE COSBY WHO BEING BY ME DULY SWORN SAYS SHE IS THE TREASURER OF THE FAITH TEMPLE CHURCH, THE CORPORATION THAT EXECUTED THE ABOVE AND FOREGOING INSTRUMENT AND THAT SAID INSTRUMENT WAS SIGNED IN BEHALF OF SAID CORPORATION BY AUTHORITY OF ITS BY-LAWS ( OR BY AUTHORITY OF A RESOLUTION OF ITS BOARD OF DIRECTORS) AND SAID FAITH TEMPLE PENTECOSTAL CHURCH ACKNOWLEDGED TO ME THAT SAID CORPORATION EXECUTED THE SAME.

MY COMMISSION EXPIRES: JULY 15, 1990

*Edward H. Campbell*  
Notary Public  
Residing in: Salt Lake City, Utah



BOOK 60,8 PAGE 1558

BONNEVILLE TITLE

ACCIES

5961124  
11/07/94 4:24 PM 10.00  
KATIE L. DIXON  
RECORDER, SALT LAKE COUNTY, UTAH  
ASPEN TITLE AGENCY  
REC BY: B GRAY , DEPUTY - WI

WHEN RECORDED MAIL TO:

ROSEMARY COSBY  
3188 DEER HOLLOW DRIVE  
SANDY, UTAH 84093

QUIT CLAIM DEED

ROSEMARY COSBY

Grantor(s) of SANDY, County of SALT LAKE, State of UTAH,  
hereby QUIT-CLAIM to:

ROSEMARY AND ROBERT C. COSBY

of SANDY, grantee(s) for the sum of TEN AND NO/100--DOLLARS, and  
other good and valuable consideration, the following described  
tract of land in SALT LAKE County, State of Utah:

Part of Lot 2 of the HUNTSMAN PLAT 'A', according to the official  
plat thereof, recorded in the office of the County Recorder of Salt  
Lake County, Utah, more particularly described as follows:

Beginning at the Western most corner of Lot 2; thence Northeasterly  
along the Northwest side of said Lot 2, to the Northernmost corner;  
thence South 51 deg. 45' East 245.0 feet; thence South 50 deg. West  
316.98 feet to the Southwestern side of Lot 2; thence North 41 deg.  
47' 50" West 121.71 feet to the point of beginning.

WITNESS, the hand of said grantor(s), this 2nd day of  
November, A.D. 1994.

Rosemary Cosby  
ROSEMARY COSBY

STATE OF UTAH)

SS.

COUNTY OF SALT LAKE)

On the 2nd day of November, A.D. 1994, personally appeared  
before me ROSEMARY COSBY, the signer(s) of the within instrument,  
who duly acknowledged to me that SHE executed the same.



Notary Public  
LINDA WEIR  
774 East Red Apple Circle  
Salt Lake City, Utah 84106  
My Commission Expires  
June 14, 1995  
State of Utah

NOTARY PUBLIC

MY COMMISSION EXPIRES:

RESIDING IN:

\*THIS DOCUMENT IS BEING RE-RECORDED TO CORRECT THE LEGAL DESCRIPTION.

BK 7136PC2180

BK 7051 PC0355

5961124  
11/07/94 4:24 PM 10.00  
KATIE L. DIXON  
RECORDER, SALT LAKE COUNTY, UTAH  
ASPEN TITLE AGENCY  
REC BY: B GRAY ,DEPUTY - WI

WHEN RECORDED MAIL TO:

ROSEMARY COSBY  
3188 DEER HOLLOW DRIVE  
SANDY, UTAH 84093

QUIT CLAIM DEED

ROSEMARY COSBY

Grantor(s) of SANDY, County of SALT LAKE, State of UTAH,  
hereby QUIT-CLAIM to:

ROSEMARY AND ROBERT C. COSBY

of SANDY, grantee(s) for the sum of TEN AND NO/100--DOLLARS, and  
other good and valuable consideration, the following described  
tract of land in SALT LAKE County, State of Utah:

Part of Lot 2 of the HUNTSMAN PLAT 'A', according to the official  
plat thereof, recorded in the office of the County Recorder of Salt  
Lake County, Utah, more particularly described as follows:

Beginning at the Western most corner of Lot 2; thence Northeasterly  
along the Northwest side of said Lot 2, to the Northernmost corner;  
thence South 51 deg. 45' East 245.0 feet; thence South 50 deg. West  
316.98 feet to the Southwestern side of Lot 2; thence North 41 deg.  
47'50" West 12.71 feet to the point of beginning.

WITNESS, the hand of said grantor(s), this 2nd day of  
November, A.D. 1994.

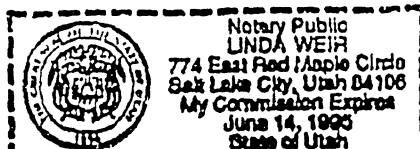
*Rosemary Cosby*  
ROSEMARY COSBY

STATE OF UTAH)

SS.

COUNTY OF SALT LAKE)

On the 2nd day of November, A.D. 1994, personally appeared  
before me ROSEMARY COSBY, the signer(s) of the within instrument,  
who duly acknowledged to me that SHE executed the same.



MY COMMISSION EXPIRES  
*July 14, 1995*

*[Signature]*  
NOTARY PUBLIC  
RESIDING IN:  
*Salt Lake County*

BR 7051 PG 0355

State of Utah  
County of San Juan

NOV 13 2000

I, the undersigned, being a  
Utah, do hereby certify that  
custody of a seal and a copy of  
records and other writings  
by law to be recorded and that  
foregoing is a true and correct  
document on file as such records.

Witness my hand and seal of office this

day of

Nancy Workman Register

By

7101680  
09/29/98 12:37 PM 10.00  
NANCY WORKMAN  
RECORDER, SALT LAKE COUNTY, UTAH  
UNITED SECURITY FINANCIAL  
406 W SOUTH JORDAN PKWY #100  
SO JORDAN UT 84095  
REC BY: V ASHBY , DEPUTY - WI

WHEN RECORDED MAIL TO:

UNITED SECURITY FINANCIAL  
406 West South Jordan Parkway #100  
South Jordan, Utah 84095

QUIT - CLAIM DEED

ROSEMARY COSBY

Grantor(s) of SANDY, County of SALT LAKE, State of Utah, hereby  
QUIT-CLAIM to:

ANNIE L. JOHNSON

of SALT LAKE CITY, Utah, grantee(s) for the sum of TEN AND NO/100  
DOLLARS, and other good and valuable consideration, the following  
described tract of land in SALT LAKE County, State of Utah:

LOT 49, WESTPOINTE PLAT "B," ACCORDING TO THE  
OFFICIAL PLAT THEREOF, RECORDED IN THE OFFICE OF  
THE SALT LAKE COUNTY RECORDER, UTAH.

Situate in Salt Lake County, State of Utah.

WITNESS, the hand of said grantor(s), this 25th day of March,  
1994.

*Rosemary Cosby*  
Annie L. Johnson

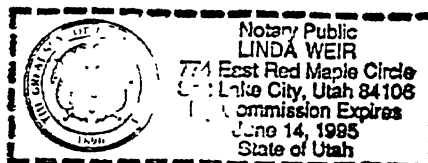
STATE OF UTAH )  
ss:  
COUNTY OF SALT LAKE )

On the 25th day of March, A.D. 1994, personally appeared before me  
ROSEMARY COSBY, the signer(s) of the within instrument, who duly  
acknowledged to me that she executed the same.

*[Signature]*  
NOTARY PUBLIC

My Commission Expires:

*6/14/95*



DK8107PG2988



6570818

6570818  
02/11/97 4:53 PM 10.00  
NANCY WORKMAN  
RECORDER, SALT LAKE COUNTY, UTAH  
PETTEY, BRANTLEY & ROBINSON  
REC BY: J FERGUSON DEPUTY - WI

WHEN RECORDED MAIL TO:

ROBERT C. COSBY  
UNITED SECURITY FINANCIAL  
406 West South Jordan Parkway #100  
South Jordan, Utah 84095

QUIT-CLAIM DEED

ROSEMARY COSBY

Grantor(s) of SANDY, County of SALT LAKE, State of Utah,  
hereby QUIT-CLAIM to:

ROBERT C. COSBY AND ROSEMARY COSBY, HUSBAND AND WIFE AS JOINT  
TENANTS WITH FULL RIGHTS OF SURVIVORSHIP

of SANDY, Utah, grantee(s) for the sum of TEN AND NO/100 DOLLARS,  
and other good and valuable, consideration, the following described  
tract of land in SALT LAKE County, State of Utah:

UNIT NO. 905 B, ZION SUMMIT CONDOMINIUM, A  
CONDOMINIUM VALIDLY FORMED UNDER THE UTAH  
CONDOMINIUM OWNERSHIP ACT IN FEE, TOGETHER  
WITH AN UNDIVIDED INTEREST IN THE COMMON AREAS  
AND FACILITIES ACCORDING TO THE OFFICIAL PLAT  
ON FILE AND OF RECORD IN THE OFFICE OF THE  
SALT LAKE COUNTY RECORDER, ALSO PARKING STALL  
NO. PWA 37 AND STORAGE LOCKER NO SWA 178 AS  
SET FORTH AND DESCRIBED IN THAT CERTAIN  
DECLARATION RECORDED IN JANUARY 13, 1997 AS  
ENTRY NO. 2897848 IN BOOK 4437 AT PAGE 1209 OF  
THE OFFICIAL RECORDS.

Situate in Salt Lake County, State of Utah.

WITNESS, the hand of said grantor(s), this 16TH day of  
DECEMBER, 1996.

*Rosemary Cosby*  
ROSEMARY COSBY

STATE OF UTAH )  
ss.  
COUNTY OF SALT LAKE )

On the 16TH day of DECEMBER, A.D. 1996, personally appeared  
before me ROSEMARY COSBY, the signer(s) of the within instrument,  
who duly acknowledged to me that she executed the same.

*Patricia A. Tunison*  
NOTARY PUBLIC

My Commission Expires:

*Jan 1 2001*



BK 7597PG10

5483185

Recorded at Request of \_\_\_\_\_

at \_\_\_\_\_ M. Fee Paid \$ \_\_\_\_\_

by \_\_\_\_\_ Dep. Book \_\_\_\_\_ Page \_\_\_\_\_ Ref.: \_\_\_\_\_

Mail tax notice to \_\_\_\_\_ Address 1510 So. Richards St  
SLC, UT 84115

## QUIT-CLAIM DEED

5483185  
22 APRIL 93 12:03 PM  
KATIE L. DIXON  
RECORDER, SALT LAKE COUNTY, UTAH  
FAITH TEMPLE PENTECOSTAL CHURCH  
REC BY: REBECCA GRAY, DEPUTY

Rosemary Cosby

of Sandy

County of Salt Lake

QUIT-CLAIM to Faith Temple Pentecostal Church

grantor  
, State of Utah, hereby

of Salt Lake City, Utah

grantee  
for the sum of  
DOLLARS,

the following described tract of land in Salt Lake  
State of Utah:

County,

Beginning at the Southwest corner of Lot 26, Block 2, COATES AND  
CORUM'S SUBDIVISION of Block 27, Plat "C" Salt Lake City Survey,  
and running thence North 45 feet; thence East 95 feet, then South  
45 feet, thence West 95 feet to the point of beginning.

WITNESS the hand of said grantor, this \_\_\_\_\_ day of  
, A. D. one thousand nine hundred and \_\_\_\_\_

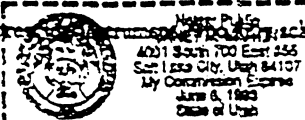
Signed in the presence of

*Rosemary Cosby*

STATE OF UTAH,  
County of Salt Lake

On the 27th day of November A. D. one  
thousand nine hundred and eighty-nine personally appeared before me Rosemary Cosby,

the signer of the foregoing instrument, who acknowledged to me that she executed the  
same.



*Janet M. Martin*  
Notary Public

My commission expires 6-08-93 Address: Salt Lake County, Utah

BK6644PG181

6585450

WHEN RECORDED MAIL TO:

ROBERT C. COSBY  
UNITED SECURITY FINANCIAL  
406 West South Jordan Parkway #100  
South Jordan, Utah 84095

6585450  
03/04/97 2:28 PM 10.00  
NANCY WORKMAN  
RECORDER, SALT LAKE COUNTY, UTAH  
ROBERT COSBY  
REC BY: E FROGGET , DEPUTY - WI

=====

QUIT - CLAIM DEED

=====

ROSEMARY COSBY

Grantor(s) of SANDY, County of SALT LAKE, State of Utah,  
hereby QUIT-CLAIM to:

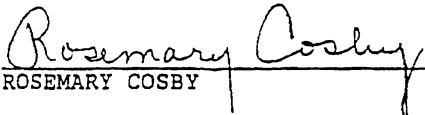
ROBERT C. COSBY AND ROSEMARY COSBY, HUSBAND AND WIFE AS JOINT  
TENANTS WITH FULL RIGHTS OF SURVIVORSHIP

of SANDY, Utah, grantee(s) for the sum of TEN AND NO/100 DOLLARS,  
and other good and valuable, consideration, the following described  
tract of land in SALT LAKE County, State of Utah:

LOT 260, PARK CREST NO. 2, ACCORDING TO THE  
OFFICIAL PLAT THEREOF, RECORDED IN BOOK 77-2  
OF PLATS AT PAGE 52, RECORDS OF SALT LAKE  
COUNTY, UTAH.

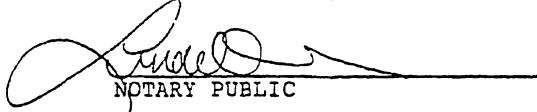
Situate in Salt Lake County, State of Utah.

WITNESS, the hand of said grantor(s), this 16TH day of AUGUST,  
1996.

  
ROSEMARY COSBY

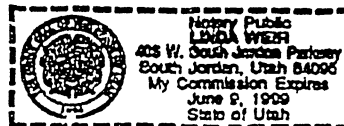
STATE OF UTAH                    )  
                                  ss.  
COUNTY OF SALT LAKE    )

On the 16TH day of AUGUST, A.D. 1996, personally appeared  
before me ROSEMARY COSBY, the signer(s) of the within instrument,  
who duly acknowledged to me that she executed the same.

  
NOTARY PUBLIC

My Commission Expires:

6/9/99



BK7611PG1005

229-502 CE

CHICAGO TITLE

QUIT

~~QUIT~~ CLAIM DEED

THIS INDENTURE WITNESSETH, that Rosemary Cosby  
of Salt Lake County in the State of Utah

RELEASE AND QUITCLAIM TO Rosemary Cosby and Robert C. Cosby, Wife and Husband  
of Salt Lake County in the State of Utah for and in consideration of  
One Dollar and 00/100-----Dollars

the receipt whereof is hereby acknowledged, the following described Real  
Estate in Marion County in the State of Indiana, to-wit:

Lot Numbered Eight hundred Ninety-Eight (898) in Devon Ridge, an Addition in  
Marion County, Indiana, the plat of which is recorded in Plat Book 28, pages  
524 and 527 inclusive, in the Office of the Recorder of Marion County,  
Indiana, EXCEPTING THEREFROM:

Ten (10) feet by parallel lines off the entire Northeast side of said lot.

*Washington*  
NOV 3 9 40 7 38 68  
JOHN R. VON ARX  
NOTARY  
CLERK

POST OFFICE ADDRESS OF GRANTEE: 3188 Deer Hollow Drive, Sandy, Utah 83092

PROPERTY ADDRESS: 1412 Dickson Road

WITNESSETH the said grantor(s) Rosemary Cosby

When Recorded, Mail To:

United Security Financial, Inc.  
406 West South Jordan Parkway, Suite 100  
South Jordan, Utah 84096

Loan No.: 77623  
Order No.: 94062441

5961125  
11/07/94 4:24 PM 26.00  
KATIE L. DIXON  
RECORDER, SALT LAKE COUNTY, UTAH  
ASPEN TITLE AGENCY  
REC BY: B GRAY DEPUTY - WI

[Space Above This Line For Recording Data]

## DEED OF TRUST

THIS DEED OF TRUST ("Security Instrument") is made on November 2, 1994.  
The trustor is ROSEMARY COSBY and ROBERT C. COSBY  
wife and husband

ASPEN TITLE AGENCY

("Borrower"). The trustee is  
("Trustee"). The beneficiary is

United Security Financial, Inc.  
under the laws of the State of Utah  
406 West South Jordan Parkway, Suite 100, South Jordan, Utah 84096

which is organized and existing  
and whose address is  
("Lender").

Borrower owes Lender the principal sum of

Four Hundred Twenty Thousand and No/100 ..... Dollars  
(U.S. \$ 420,000.00). This debt is evidenced by Borrower's note dated the same date as this  
Security Instrument ("Note"), which provides for monthly payments, with the full debt, if not paid earlier,  
due and payable on December 1, 2024. This Security Instrument secures to Lender: (a) the repayment  
of the debt evidenced by the Note, with interest, and all renewals, extensions and modifications of the Note;  
(b) the payment of all other sums, with interest, advanced under paragraph 7 to protect the security of this  
Security Instrument; and (c) the performance of Borrower's covenants and agreements under this Security  
Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust,  
with power of sale, the following described property located in SALT LAKE County, UTAH:

PART OF LOT 2 OF THE HUNTEMAN FLAT "A", ACCORDING TO THE  
OFFICIAL PLAT THEREOF, RECORDED IN THE OFFICE OF THE COUNTY  
RECORDER OF SALT LAKE COUNTY, UTAH, MORE PARTICULARLY DESCRIBED  
AS FOLLOWS:

BEGINNING AT THE WESTERN MOST CORNER OF LOT 2; THENCE  
NORTHEASTERLY ALONG THE NORTHWEST SIDE OF SAID LOT 2, TO THE  
NORTHEASTMOST CORNER; THENCE SOUTH 51 DEG. 45' EAST 348.8 FEET;  
THENCE SOUTH 50 DEG. WEST 316.98 FEET TO THE SOUTHWESTERN SIDE  
OF LOT 2; THENCE NORTH 41 DEG. 47'50" WEST 12.71 FEET TO THE  
POINT OF BEGINNING.

which has the address of

3188 DEER HOLLOW DRIVE, SANDY,  
[Street] [City]

UTAH 84093 ("Property, Address");  
[State] [Zip Code]

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements,  
appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions  
shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security  
Instrument as the "Property."

5961125

BR 7051 PG 0356

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any rider(s) executed by Borrower and recorded with it.

Witnesses:

Tarce D. Carlson Rosemary Cosby (Seal)  
ROSEMARY COSBY -Borrower

Robert C. Cosby (Seal)  
ROBERT C. COSBY -Borrower

\_\_\_\_ (Seal)  
\_\_\_\_ -Borrower

\_\_\_\_ (Seal)  
\_\_\_\_ -Borrower

STATE OF UTAH, Salt Lake County ss:

On November 2, 1994, before me, the undersigned, a Notary Public in and for said State, personally appeared ROSEMARY COSBY and ROBERT C. COSBY

wife and husband

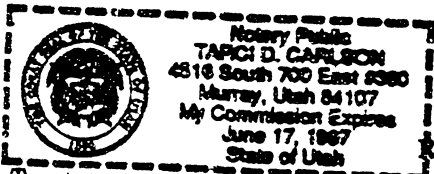
known to me (or proved to me on the basis of satisfactory evidence) to be person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same.

WITNESS my hand and official seal,

My commission expires:

Tarce D. Carlson

Notary Public  
Residing at:



REQUEST FOR RECONVEYANCE

To Trustee:

The undersigned is the holder of the note or notes secured by this Deed of Trust. Said note or notes, together with all other indebtedness secured by this Deed of Trust, have been paid in full. You are hereby directed to cancel said note or notes and this Deed of Trust, which are delivered hereby, and to reconvey, without warranty, all the estate now held by you under this Deed of Trust to the person or persons legally entitled thereto.

Date: \_\_\_\_\_

(vi) That I have the right in any lawsuit for foreclosure and sale to argue that I did keep my promises and agreements under the Note and under this Security Instrument, and to present any other defenses that I may have.

(C) I do not correct the default stated in the notice from Lender by the date stated in that notice.

## 22. LENDER'S OBLIGATION TO DISCHARGE THIS SECURITY INSTRUMENT

When Lender has been paid all amounts due under the Note and under this Security Instrument, Lender will discharge this Security Instrument by delivering a certificate stating that this Security Instrument has been satisfied.

## 23. RIDERS TO THIS SECURITY INSTRUMENT

If one or more riders are signed by Borrower and recorded together with this Security Instrument, the promises and agreements of each rider are incorporated as a part of this Security Instrument [Check applicable box(es)]

- |   |  |
|---|--|
| <input type="checkbox"/> Adjustable Rate Rider(s) | <input type="checkbox"/> Condominium Rider                         |
| <input type="checkbox"/> Graduated Payment Rider  | <input checked="" type="checkbox"/> Planned Unit Development Rider |
| <input type="checkbox"/> Balloon Rider            | <input checked="" type="checkbox"/> Rate Improvement Rider         |
| <input type="checkbox"/> V.A. Rider               | <input type="checkbox"/> Other(s) [specify]                        |
| <input type="checkbox"/> 1-4 Family Rider         | <input type="checkbox"/> Biweekly Payment Rider                    |
| <input type="checkbox"/> Second Home Rider        | <input checked="" type="checkbox"/> Construction Rider             |

BY SIGNING BELOW, I accept and agree to the promises and agreements contained in pages 1 through 13 of this Security Instrument and in any rider(s) signed by me and recorded with it.

**X** Robert C. Cosby  
Robert C. Cosby - Borrower

**X** Rosemary Cosby  
Rosemary Cosby - Borrower

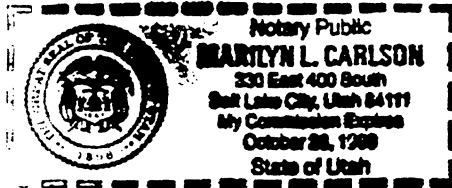
This document prepared by Stephanie S. Irey.

UTAH  
STATE OF ~~INDIANA~~, Salt Lake County ss:

On this 26th day of March, 1996, before me personally came Robert C. Cosby and Rosemary Cosby, to me known and known to me the individual(s) described in and who executed the foregoing instrument, and he/she/they duly acknowledged to me that he/she/they executed the same.

My Commission Expires:

Marilyn L. Carlson  
Notary Public





229-502C

When Recorded, Mail To:

## CHICAGO TITLE

Loan No.:

Order No.: 229-502C

[Space Above This Line For Recording Data]

## MORTGAGE

THIS MORTGAGE ("Security Instrument") is given on November 3, 1994. The mortgagor is ROSEMARY COSBY and ROBERT C. COSBY wife and husband

("Borrower"). This Security Instrument is given to

United Security Financial Inc.,

which is organized and existing under the laws of the State of Utah, and whose address is 406 West South Jordan Parkway, Suite 100, South Jordan, Utah ("Lender"). Borrower owes Lender the principal sum of

One Hundred Thirty Six Thousand Six Hundred and No/100 ..... Dollars (U.S. \$ 137,600.00).

This debt is evidenced by Borrower's note dated the same date as this Security Instrument ("Note"), which provides for monthly payments, with the full debt, if not paid earlier, due and payable on November 1, 2024. This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest, and all renewals, extensions and modifications of the Note; (b) the payment of all other sums, with interest, advanced under paragraph 7 to protect the security of this Security Instrument; and (c) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to Lender the following described property located in MARION County, INDIANA:

LOT NUMBER EIGHT HUNDRED NINETY-EIGHT (898) IN DEVON RIDGE, AN ADDITION IN MARION COUNTY, INDIANA, THE PLAT OF WHICH IS RECORDED IN PLAT BOOK 28, PAGES 524 AND 527 INCLUSIVE, IN THE OFFICE OF THE RECORDER OF MARION COUNTY, INDIANA. EXCEPTING THEREFROM: TEN (10) FEET BY PARALLEL LINES OFF THE ENTIRE NORTHEAST SIDE OF SAID LOT.

which has the address of

4412 DICKSON ROAD,  
[Street]

INDIANAPOLIS,  
[City]

INDIANA 4626 ("Property Address");  
[State] [Zip Code]

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

11/16/94 08:50AM JOAN N. ROMERIL MARION CTY RECORDER RAM 22.00 PAGES: 9

Inst # 1994-0170169

INDIANA - Single Family - Fannie Mae/Freddie Mac Uniform Instrument Form 3015 9/90 (page 1 of 6 pages)

 Springer

If Lender exercises the acceleration option to require immediate payment in full, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is delivered or mailed within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

*Rosemary Cosby* (Seal) *Robert C. Cosby* (Seal)  
ROSEMARY COSBY -Borrower ROBERT C. COSBY -Borrower

\_\_\_\_\_(Seal)\_\_\_\_\_(Seal)  
-Borrower -Borrower

When Recorded, Mail To:

United Security Financial  
406 West South Jordan Parkway, Suite 100  
South Jordan, Utah 84095

6542374  
01/03/97 4:37 PM 32.00  
NANCY WORKMAN  
RECORDER, SALT LAKE COUNTY, UTAH  
PETTEY, BRANTLEY & ROBINSON  
4516 S 700 E STE 370 SLC, 84107  
REC BY: V ASHBY , DEPUTY - WT

Order No.: 96-09-111

Loan No.:

(Space Above This Line For Recording Data)

## DEED OF TRUST

THIS DEED OF TRUST ("Security Instrument") is made on December 16, 1996.

The trustor is ROBERT C. COSBY and ROSEMARY COSBY  
husband and wife

ATTORNEYS' TITLE GUARANTY FUND, INC., AGENCY

("Borrower"). The trustee is  
("Trustee"). The beneficiary is

United Security Financial  
under the laws of the State of Utah  
406 West South Jordan Parkway, Suite 100, South Jordan, Utah 84095

, which is organized and existing  
, and whose address is  
("Lender").

Borrower owes Lender the principal sum of  
One Hundred Five Thousand and No/100 ..... Dollars  
(U.S. \$ 105,000.00). This debt is evidenced by Borrower's note dated the same date as this  
Security Instrument ("Note"), which provides for monthly payments, with the full debt, if not paid earlier,  
due and payable on January 1, 2027. This Security Instrument secures to Lender: (a) the repayment  
of the debt evidenced by the Note, with interest, and all renewals, extensions and modifications of the Note;  
(b) the payment of all other sums, with interest, advanced under paragraph 7 to protect the security of this  
Security Instrument; and (c) the performance of Borrower's covenants and agreements under this Security  
Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust,  
with power of sale, the following described property located in SALT LAKE County, UTAH:

UNIT NO. 905 B, ZION SUMMIT CONDOMINIUM, A CONDOMINIUM VALIDLY  
FORMED UNDER THE UTAH CONDOMINIUM OWNERSHIP ACT IN FEE, TOGETHER  
WITH AN UNDIVIDED INTEREST IN THE COMMON AREAS AND FACILITIES  
ACCORDING TO THE OFFICIAL PLAT ON FILE AND OF RECORD IN THE  
OFFICE OF THE SALT LAKE COUNTY RECORDER, ALSO PARKING STALL NO.  
PWA 37 AND STORAGE LOCKER NO. SWA 173 AS SET FORTH AND DESCRIBED  
IN THAT CERTAIN DECLARATION RECORDED JANUARY 13, 1977 AS ENTRY  
NO. 2897848 IN BOOK 4437 AT PAGE 1209 OF THE OFFICIAL RECORDS.

which has the address of

241 NORTH VINE STREET, #905W,  
[Street]

SALT LAKE CITY,  
[City]

UTAH 84103 ("Property Address");  
[State] [Zip Code]

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements,  
appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions  
shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security  
Instrument as the "Property."

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any rider(s) executed by Borrower and recorded with it.

Witnesses:

\_\_\_\_\_  
*Robert C. Cosby* (Seal)  
ROBERT C. COSBY -Borrower

\_\_\_\_\_  
*Rosemary Cosby* (Seal)  
ROSEMARY COSBY -Borrower

\_\_\_\_\_  
\_\_\_\_\_  
(Seal)  
-Borrower

\_\_\_\_\_  
\_\_\_\_\_  
(Seal)  
-Borrower

STATE OF UTAH,

County ss:

On December 16, 1996, before me, the undersigned, a Notary Public in and for said State, personally appeared ROBERT C. COSBY and ROSEMARY COSBY

husband and wife

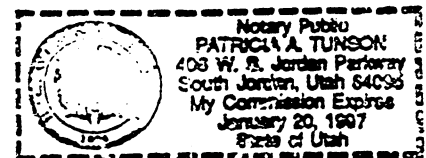
known to me (or proved to me on the basis of satisfactory evidence) to be person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same.

WITNESS my hand and official seal,

My commission expires:

*Jan. 20, 1997*

*Patricia A. Tunson*  
Notary Public  
Residing at:



REQUEST FOR RECONVEYANCE

To Trustee:

The undersigned is the holder of the note or notes secured by this Deed of Trust. Said note or notes, together with all other indebtedness secured by this Deed of Trust, have been paid in full. You are hereby directed to cancel said note or notes and this Deed of Trust, which are delivered hereby, and to reconvey, without warranty, all the estate now held by you under this Deed of Trust to the person or persons legally entitled thereto.

Date: \_\_\_\_\_

\_\_\_\_\_

**H. ASSIGNMENT OF RENTS; APPOINTMENT OF RECEIVER; LENDER IN POSSESSION.** Borrower absolutely and unconditionally assigns and transfers to Lender all the rents and revenues ("Rents") of the Property, regardless of to whom the Rents of the Property are payable. Borrower authorizes Lender or Lender's agents to collect the Rents, and agrees that each tenant of the Property shall pay the Rents to Lender or Lender's agents. However, Borrower shall receive the Rents until (i) Lender has given Borrower notice of default pursuant to paragraph 21 of the Security Instrument and (ii) Lender has given notice to the tenant(s) that the Rents are to be paid to Lender or Lender's agent. This assignment of Rents constitutes an absolute assignment and not an assignment for additional security only.

If Lender gives notice of breach to Borrower: (i) all Rents received by Borrower shall be held by Borrower as trustee for the benefit of Lender only, to be applied to the sums secured by the Security Instrument; (ii) Lender shall be entitled to collect and receive all of the Rents of the Property; (iii) Borrower agrees that each tenant of the Property shall pay all Rents due and unpaid to Lender or Lender's agents upon Lender's written demand to the tenant; (iv) unless applicable law provides otherwise, all Rents collected by Lender or Lender's agents shall be applied first to the costs of taking control of and managing the Property and collecting the Rents, including, but not limited to, attorney's fees, receiver's fees, premiums on receiver's bonds, repair and maintenance costs, insurance premiums, taxes, assessments and other charges on the Property, and then to the sums secured by the Security Instrument; (v) Lender, Lender's agents or any judicially appointed receiver shall be liable to account for only those Rents actually received; and (vi) Lender shall be entitled to have a receiver appointed to take possession of and manage the Property and collect the Rents and profits derived from the Property without any showing as to the inadequacy of the Property as security.


If the Rents of the Property are not sufficient to cover the costs of taking control of and managing the Property and of collecting the Rents any funds expended by Lender for such purposes shall become indebtedness of Borrower to Lender secured by the Security Instrument pursuant to Uniform Covenant 7.

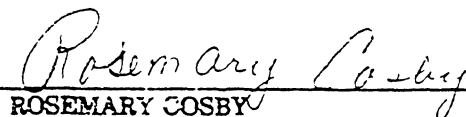
Borrower represents and warrants that Borrower has not executed any prior assignment of the Rents and has not and will not perform any act that would prevent Lender from exercising its rights under this paragraph.

Lender, or Lender's agents or a judicially appointed receiver, shall not be required to enter upon, take control of or maintain the Property before or after giving notice of default to Borrower. However, Lender, or Lender's agents or a judicially appointed receiver, may do so at any time when a default occurs. Any application of Rents shall not cure or waive any default or invalidate any other right or remedy of Lender. This assignment of Rents of the Property shall terminate when all the sums secured by the Security Instrument are paid in full.

**I. CROSS-DEFAULT PROVISION.** Borrower's default or breach under any note or agreement in which Lender has an interest shall be a breach under the Security Instrument and Lender may invoke any of the remedies permitted by the Security Instrument.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and provisions contained in this 1-4 Family Rider.

  
\_\_\_\_\_  
ROBERT C. COSBY (Seal)  
-Borrower

  
\_\_\_\_\_  
ROSEMARY COSBY (Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

When Recorded, Mail To:

United Security Financial, Inc.  
406 West South Jordan Parkway, Suite 100  
South Jordan, Utah 84095

5961125  
11/07/94 4:24 PM 26.00  
KATIE L. DIXON  
RECORDER, SALT LAKE COUNTY, UTAH  
ASPEN TITLE AGENCY  
REC BY: B GRAY , DEPUTY - WI

Loan No.: 77622  
Order No.: 94052441

[Space Above This Line For Recording Data]

## DEED OF TRUST

THIS DEED OF TRUST ("Security Instrument") is made on November 2, 1994.  
The trustor is ROSEMARY COSBY and ROBERT C. COSBY  
wife and husband.

ASPEN TITLE AGENCY

("Borrower"). The trustee is  
("Trustee"). The beneficiary is

United Security Financial, Inc.  
under the laws of the State of Utah  
406 West South Jordan Parkway, Suite 100, South Jordan, Utah 84095

, which is organized and existing  
, and whose address is  
("Lender").

Borrower owes Lender the principal sum of  
Four Hundred Twenty Thousand and No/100 ..... Dollars  
(U.S. \$ 420,000.00). This debt is evidenced by Borrower's note dated the same date as this  
Security Instrument ("Note"), which provides for monthly payments, with the full debt, if not paid earlier,  
due and payable on December 1, 2024. This Security Instrument secures to Lender: (a) the repayment  
of the debt evidenced by the Note, with interest, and all renewals, extensions and modifications of the Note;  
(b) the payment of all other sums, with interest, advanced under paragraph 7 to protect the security of this  
Security Instrument; and (c) the performance of Borrower's covenants and agreements under this Security  
Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust,  
with power of sale, the following described property located in SALT LAKE County, UTAH:

PART OF LOT 2 OF THE HUNTSMAN FLAT "A", ACCORDING TO THE  
OFFICIAL PLAT THEREOF, RECORDED IN THE OFFICE OF THE COUNTY  
RECORDER OF SALT LAKE COUNTY, UTAH, MORE PARTICULARLY DESCRIBED  
AS FOLLOWS:

BEGINNING AT THE WESTERN MOST CORNER OF LOT 2; THENCE  
NORTHEASTERLY ALONG THE NORTHWEST SIDE OF SAID LOT 2, TO THE  
NORTHERMOST CORNER; THENCE SOUTH 51 DEG. 45' EAST 245.0 FEET;  
THENCE SOUTH 53 DEG. WEST 816.98 FEET TO THE SOUTHWESTERN SIDE  
OF LOT 2; THENCE NORTH 41 DEG. 47'50" WEST 12.71 FEET TO THE  
POINT OF BEGINNING.

which has the address of

3186 DEER HOLLOW DRIVE, SANDY,  
[Street] [City]

UTAH 84098 ("Property Address");  
[State] [Zip Code]

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements,  
appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions  
shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security  
Instrument as the "Property."

11/05/1994 03:56

BY SIGNING BELOW, Borrower accepts and agrees to the terms and conditions contained in this Security Instrument and in any rider(s) executed by Borrower and recorded with it.

Witnesses:

Tarci D. Carlson Rosemary Cosby (Seal)  
ROSEMARY COSBY -Borrower

Robert C. Cosby (Seal)  
ROBERT C. COSBY -Borrower

\_\_\_\_ (Seal)  
\_\_\_\_ -Borrower

\_\_\_\_ (Seal)  
\_\_\_\_ -Borrower

STATE OF UTAH, Salt Lake County ss:

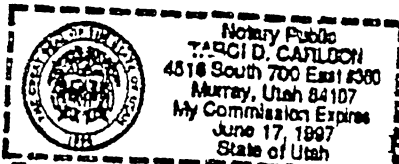
On November 2, 1994, before me, the undersigned, a Notary Public in and for said State, personally appeared ROSEMARY COSBY and ROBERT C. COSBY

wife and husband

known to me (or proved to me on the basis of satisfactory evidence) to be person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same.

WITNESS my hand and office's seal,

My commission expires:



Tarci D. Carlson  
Notary Public  
Residing at:

REQUEST FOR RECONVEYANCE

To Trustee:

The undersigned is the holder of the note or notes secured by this Deed of Trust. Said note or notes, together with all other indebtedness secured by this Deed of Trust, have been paid in full. You are hereby directed to cancel said note or notes and this Deed of Trust, which are delivered hereby, and to reconvey, without warranty, all the estate now held by you under this Deed of Trust to the person or persons legally entitled thereto.

Date: \_\_\_\_\_

evaluate the intended transferee as if a new loan were being made to the transferee; and (n) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

Lender may charge a reasonable fee as a condition to Lender's exercise of this option. Lender may also require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

If Lender exercises the option to require immediate payment in full, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is delivered or mailed within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

Borrower accepts and agrees to the terms and covenants contained in this Adjustable Rate Rider.

Robert C. Cosby (Seal)  
ROBERT C. COSBY -Borrower

Robert C. Cosby (Seal)  
ROBERT C. COSBY -Borrower

\_\_\_\_ (Seal)  
-Borrower

\_\_\_\_ (Seal)  
-Borrower



## ADDENDUM NO. 6

# *Independent Forensic Laboratories*

5189 S. Espadrille Drive, Salt Lake City, Utah 84118-1274

---

George J. Throckmorton  
Forensic Document Examiner

March 17, 1999

232-6666  
(801) 573-8818  
(801) 968-6856

Edward W. McBride  
Attorney at Law  
9 Exchange Place, Suite 1010  
Salt Lake City, UT 84101

Dear Mr. McBride,

RE: Rosemary Cosby

This report pertains to my examination of four (4) additional documents received via. U.S. Mail on 2-18-99, and examined according to your instructions.

Writing in Question: Signed name "Rosemary Cosby" found on **copies** of . . .

- Q-5) Deed of Trust; 12-16-96
- Q-6) Condominium Rider; 12-16-96
- Q-7) Family Rider; Assignment of Rents; 12-16-96
- Q-8) Deed of Trust; 8-18-95

Writing of Known Authorship: Writing of Rosemary Cosby found on . . .

- K-1) **machine copy** Certificate of Baptism on Lamia Hoskins; 12 Feb 1995
- K-2) **original signature on copied** US Tax Return 1040X; 4-15-80
- K-3) **original** Consumer Loan Application for \$130,000; no date
- K-4) **original** Zions First National Bank Credit Application; 4-28-81
- K-5) **original** Marriage Certificate dated 20 September 1988
- K-6) **original** Marriage Certificate; April 20, 1976
- K-7) **copy** of Articles of Amendment; dated 2 Aug 1971; with signed name Pastor Rosemary Radford written twice.
- K-8) **copy** typed document dated August 2, 1971; with signed name Pastor Rosemary Radford

An examination was conducted to determine what identifiable characteristics were present in both the questioned, and known writing listed above. These characteristics were compared with each other to see if similarities or differences existed. A comprehensive examination, and evaluation of the writing resulted in the following professional opinion.

(continued on next page)

Edward W. McBride

March 17, 1999

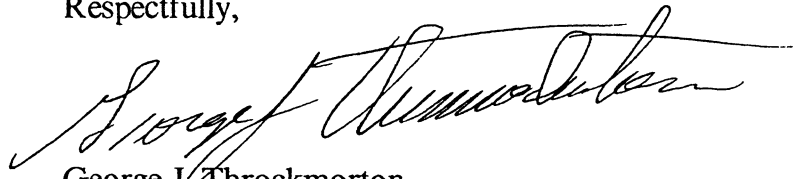
page 2 of 2 . . . .

I could not make a positive determination due to the limitations imposed by the examination of photo-copies rather than original questioned documents. If original documents are provided for examination, it may provide a basis for a more positive determination.

- I. Neither Q-5, Q-6, nor Q-7 appear to be genuine signatures of Rosemary Cosby. They all appear to be simulated-forgeries written by someone who has access to or is familiar with the known writing style of Cosby.
- II. Q-8 was a poor quality copy and the degree of scientific certainty was reduced. However, there were indications this was also a simulated-forgery.
- III. I could not identify the author of these simulations.

I hope the above information will be of value to you. If I may be of further assistance, please give me a call.

Respectfully,

A handwritten signature in cursive script, appearing to read "George J. Throckmorton".

George J. Throckmorton  
Forensic Document Examiner

GJT:ct  
enclosure

## ADDENDUM NO. 7

FILED  
THIRD DISTRICT COURT

01 APR 19 PM 4:24

J. Bruce Reading (#2700)

Lisa A. Jones (#5496)

SCALLEY & READING, P.C.

Attorneys for Defendants, Cosby, Johnston & United Security

261 East 300 South, Suite 200

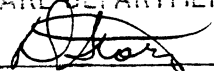
Salt Lake City, Utah 84111

Telephone: (801) 531-7870

Facsimile: (801) 531-7968

SALT LAKE DEPARTMENT

BY



CLERK

---

IN THE THIRD JUDICIAL DISTRICT COURT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

---

ROSALIND CAZARES, as co-personal  
Representative of THE ESTATE OF ROSEMARY  
COSBY,

Plaintiff,

vs.

ROBERT C. COSBY, ANNIE L. JOHNSON, CHASE  
MANHATTAN MORTGAGE COMPANY,  
HEADLANDS MORTGAGE COMPANY,  
HEADLAND HOME EQUITY LOAN TRUST,  
UNITED SECURITY FINANCIAL and JOHN  
DOES 1-10,

Defendants.

---

HEADLANDS MORTGAGE COMPANY and  
HEADLAND HOME EQUITY LOAN TRUST,

Third-Party Plaintiffs,

vs.

LINDA WEIR and WESTERN SURETY  
COMPANY,

Third-Party Defendants.

---

**MOTION IN LIMINE**

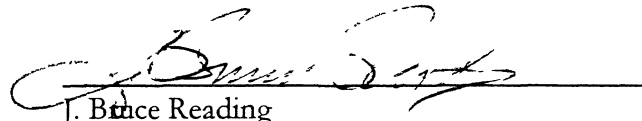
Civil No. 990902004

Judge William B. Bohling

Defendants, Cosby, Johnson and United Security and Third Party Defendant, Weir, by and through their attorney of record, J. Bruce Reading, hereby move the above-entitled Court to restrict testimony regarding the authenticity of Rosemary Cosby's signature on the deeds in dispute in this case. Under Utah Code Ann. sections 57-2-10 and 57-2-14, such testimony must be restricted to the notaries who acknowledged the deeds. The legal basis for Defendants' Motion is contained in the Memorandum that accompanies this Motion.

DATED this 18 day of April, 2001.

SCALLEY & READING, P.C.

  
J. Bruce Reading  
Attorney for Defendants/Third Party  
Defendant

J. Bruce Reading (#2700)  
Lisa A. Jones (#5496)  
SCALLEY & READING, P.C.  
Attorneys for Defendants, Cosby, Johnston & United Security  
261 East 300 South, Suite 200  
Salt Lake City, Utah 84111  
Telephone: (801) 531-7870  
Facsimile: (801) 531-7968

FILED  
THIRD DISTRICT COURT  
01 APR 19 PM 4:24  
SALT LAKE DEPARTMENT  
BY *[Signature]*  
DEPUTY CLERK

---

IN THE THIRD JUDICIAL DISTRICT COURT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

---

ROSALIND CAZARES, as co-personal  
Representative of THE ESTATE OF ROSEMARY  
COSBY,

Plaintiff,

vs.

ROBERT C. COSBY, ANNIE L. JOHNSON, CHASE  
MANHATTAN MORTGAGE COMPANY,  
HEADLANDS MORTGAGE COMPANY,  
HEADLAND HOME EQUITY LOAN TRUST,  
UNITED SECURITY FINANCIAL and JOHN  
DOES 1-10,

Defendants.

---

HEADLANDS MORTGAGE COMPANY and  
HEADLAND HOME EQUITY LOAN TRUST,

Third-Party Plaintiffs,

vs.

LINDA WEIR and WESTERN SURETY  
COMPANY,

Third-Party Defendants.

---

MEMORANDUM IN SUPPORT OF  
MOTION IN LIMINE

Civil No. 990902004  
Judge William B. Bohling

Defendants, Robert C. Cosby, Annie L. Johnson and United Security Financial, by and  
through their counsel of record, J. Bruce Reading, submits the following Memorandum in support

of his Motion in Limine, and moves this Court to restrict testimony regarding the validity of the deeds at issue to that of subscribing witnesses.

**The Validity of a Deed Cannot Be Challenged by Proof of Handwriting Unless The Subscribing Witnesses to The Deed Are Unavailable.**

By statute, the Plaintiff in the case at bar may not present any witnesses to challenge the validity of the deeds at issue other than the notaries who acknowledged the deeds. Utah Code Ann. sections 57-2-10 and 57-2-14 (Lexis 2000) limit the proof of the grantor's signature to the testimony of subscribing witnesses, unless such witnesses are unavailable. Section 57-2-10 states:

The proof of the execution of any conveyance whereby real estate is conveyed or may be affected shall be:

- (1) by the testimony of a subscribing witness, if there is one; or,
- (2) when all the subscribing witnesses are dead, or cannot be had, by evidence of the handwriting of the party, and of a subscribing witness, if there is one, given by a credible witness to each signature.

The only subscribing witnesses to the deeds under dispute in this case are the various notaries who acknowledged Rosemary Cosby's signature. Under the plain language of the statute they must be provided as witnesses, and only in the event that they are dead or otherwise unavailable may other evidence be provided to challenge the authenticity of Ms. Cosby's signature. Thus, either lay or expert witness opinions on Ms. Cosby's signature should be excluded from evidence.

That the notaries are the only witnesses allowed, unless they are unavailable, is even more clearly stated in § 57-2-14:

No proof by evidence of the handwriting of a party, or of the subscribing witness or witnesses, shall be taken unless the officer taking the same shall be satisfied that all the subscribing witnesses to

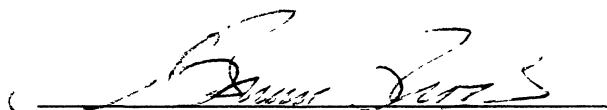


such conveyance are dead, out of the jurisdiction, or cannot be had to prove the execution thereof.

Absent proof that the notaries who acknowledged the deeds under dispute are unavailable, § 57-2-14 clearly prohibits any challenge to Ms. Cosby's signature through the testimony of witnesses other than the notaries. Therefore, in consideration of the foregoing points and authorities, the Defendant requests a preliminary ruling that no evidence of the handwriting of Rosemary Cosby be admitted other than the testimony of the notaries who acknowledged Ms. Cosby's signature, unless Plaintiffs can show that those notaries are unavailable.

DATED this 18 day of April, 2001.

SCALLEY & READING, P.C.

A handwritten signature in dark ink, appearing to read "J. Bruce Reading", is written over a horizontal line.

J. Bruce Reading  
Attorney for Defendants and Third Party  
Defendant

### MAILING CERTIFICATE

I hereby certify that I mailed, postage prepaid, a true and exact copy of the foregoing

**MEMORANDUM IN SUPPORT OF MOTION IN LIMINE** to the following party on the

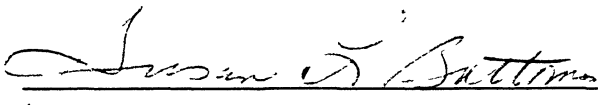
19<sup>th</sup> day of April 2001:

John B. Wilson  
Laura S. Scott  
Parsons Behle & Latimer  
Attorneys for Chase Manhattan  
201 South Main Street #1800  
Salt Lake City, Utah 84145-0898

David E. West  
Attorney for Headlands  
3441 South Decker Lake Drive  
Salt Lake City, Utah 84119

Edward M. Garrett  
Garrett & Garrett  
Attorney for Plaintiff  
2091 East 1300 South #201  
Salt Lake City, Utah 84108

John N. Braithwaite  
Plant Wallace  
Attorney for Third Party Defendant  
136 E. S. Temple, #1700  
Salt Lake City, Utah 84111

  
\_\_\_\_\_

## ADDENDUM NO. 8

**FILED DISTRICT COURT**  
Third Judicial District

MAY 01 2001

SALT LAKE COUNTY

By

Deputy Clerk

Edward M. Garrett #1163  
GARRETT & GARRETT  
2091 East 1300 South, Ste. 201  
Salt Lake City. Utah 84108  
Telephone (801) 581-1144  
Facsimile (801) 581-1168

---

IN THE THIRD JUDICIAL DISTRICT COURT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

---

ROSALIND CAZARES, as Co-personal  
Representative of THE ESTATE OF  
ROSEMARY COSBY,

Plaintiff,

vs.

ROBERT C. COSBY, ANNIE L.  
JOHNSON, CHASE MANHATTAN  
MORTGAGE CORPORATION,  
HEADLANDS HOME EQUITY LOAN,  
TRUST, UNITED SECURITY  
FINANCIAL, and JOHN DOES 1-10,

Defendants,

RESPONSE TO MOTION  
: IN LIMINE

Case No.: 990902004

Judge: William B. Bohling

---

HEADLANDS MORTGAGE COMPANY :  
And HEADLANDS HOME EQUITY :  
LOAN TRUST, :

Third-Party Plaintiffs, :

vs. :

LINDA WEIR and WESTERN SURETY :  
COMPANY, :

Defendants. :

---

## **BACKGROUND**

Plaintiff brings suit against Defendants for:

Quiet Title, Fraud, Conversion, and Civil Conspiracy.

At a scheduling hearing of this case in January, 2001, the court set the date of May 21, 2001 to determine whether sufficient evidence exists to place the issue of forgery before the jury at the trial of this action.

Lists of lay witnesses concerning whether the signature of Rosemary Cosby was forged have been exchanged by the parties. George Throckmorton, a document examiner, is listed by Plaintiff, as an expert witness.

At a status hearing before the court in April 2001, Defendants indicated to the court that a Utah Statute barred any testimony concerning forgery if a document was notarized. The order proposed by the Defendants and submitted to the court did not conform to the statement made in court and the Plaintiff objected to the order.

The Defendants have now filed a Motion In Limine, which seeks a ruling from the court to the effect that, no evidence as to signature may be taken by the court except that of the notary public. This motion was mailed April 19, 2001, and received by undersigned counsel on April 22, 2001.

## **ARGUMENT**

In support of the statement made by Defendants that only the notary who took the acknowledgement can testify concerning a notarized document, Defendants cite only two code sections, UCA 57-2-10 and 57-2-14. Defendants have taken these two sections of the code out

of context. In order to fully understand Chapter 2 title 57, all sections of the Chapter must be considered.

Chapter 2, title 57 relates to certificates of proof of execution and provide what an officer must do before a certificate of proof can be issued. The statute speaks only of subscribing witnesses to a signature and if subscribing witnesses are dead or cannot be had, evidence of handwriting of the party, and of the subscribing witness shall be given by a credible witness to the signature of the party and of the subscribing witness.

Defendants state that there are no subscribing witnesses to any of the deeds that Plaintiff claims are forgeries. Defendants then say that since the deeds bear a notary stamp that under Chap. 2 only the notary can testify. Those sections of Chap. 2 do not so state and no such meaning can be extracted for the statutory language.

Chap. 2 relates to an instrument, such as a deed, where the signature of the grantor is not acknowledged by a notary and hence not recordable. In order to remedy that problem, Chap. 2 provides a method, whereby a notary, if requested, may take evidence from subscribing witnesses or third party verifying both the signature of the subscribing witness and the party. A certificate may thereupon be executed, which would entitle the document to record.

Consider a fairly common example, where a parent conveys real property to her children, signs and delivers the deed, but dies before the deed can be acknowledged. The title would not be marketable because the deed could not be recorded. Upon sufficient evidence a

notary can execute a certificate pursuant to those sections of the chapter, which enable a deed to be recorded.

There is nothing in the sections, which say that a notary stamp is conclusive evidence and the only evidence that a court can entertain on the subject of authenticity.

There is nothing stated in Chap. 2 or indeed any of the acknowledgement sections of title 57 that states that a notary public is the only person who can testify concerning the authenticity of a signature. This is a result the Defendants seek and such a result would be absurd.

---

We consider now the memorandum filed by Chase Manhattan, Dated April 25, 2001. Chase states that Trust Deed was “subscribed and sworn to and acknowledged by” Rosemary and Robert on August 18, 1995, before Tarci D. Eastburn, a Utah Notary Public.

Presumably Chase Manhattan has investigated the matter and is willing to vouch to the court that Rosemary and Robert appeared before Tarci D. Eastburn on the 18<sup>th</sup> day of August, 1995, in Salt Lake County, Utah, and thereupon subscribed and acknowledged the Chase Trust Deed.

However, we ask the court and parties to carefully review exhibit A, attached to this response. It is a copy of a medical record made in the State of Florida. On August 18, 1995, Rosemary Cosby was being treated for an abscessed leg. She was operated on in Indianapolis, Indiana and was in Florida to recuperate. She was either in Indianapolis, Indiana on August 18, 1995 or in Florida, She was not in Salt Lake County, State of Utah.

Plaintiff can prove the signature of Rosemary Cosby on the Deed of Trust, is a forgery. In addition to the medical records, Plaintiffs will produce other evidence that will show that Rosemary Cosby was not in Salt Lake County, Utah on the day Tarci D. Eastburn says she appeared in Salt Lake County, Utah and subscribed and acknowledged Deed of Trust. Nonetheless, Chase Manhattan concludes that Plaintiff is prohibited from introducing any such evidence because the notary seal and testimony of Tarci Eastburn is conclusive. The sections of Chap. 2 relied upon by Defendants serve a special purpose relating to documents that have not been notarized. The statutes do not say nor can they be construed to say that a party may not prove that a signature is not authentic and is a forgery.

### CONCLUSION

The Utah Supreme Court held in the case of Rasmussen vs. Olsen 583 P.2d 53. That; Recording of a forged deed gives no notice to world or to anybody within it of the contents thereof. Such a deed is void and even if a bona-fide purchaser from a person who altered it takes nothing by it.

Under the rule of Rasmussen, surely the party has the right to present evidence of forgery and is not relegated to the testimony of a notary, who may not be entirely truthful.

The Motion in Limine must be denied.

Dated this day 1<sup>st</sup> of May, 2001.

GARRETT & GARRETT

By 

Edward M. Garrett



CERTIFICATE OF MAILING

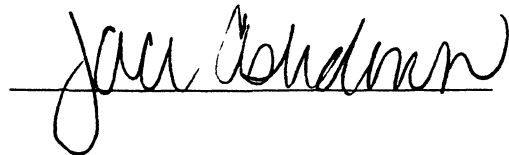
I hereby certify on this \_\_\_\_ day of May, 2001, I caused to mailed, first class, postage prepaid, a true and correct copy of the foregoing COPIES OF DOCUMENTS BEARING THE FORGED SIGNATURE OF ROSEMARY COSBY to:

Laura S. Scott  
John B. Wilson  
201 South Main Street, Suite 1800  
P.O. Box 45898  
Salt Lake City, Utah 54145-0898

David E. West  
3441 South Decker Lane  
West Valley City, Utah 84119

J. Bruce Reading  
Scalley & Reading P.C.  
261 East 300 South, 2<sup>nd</sup> Floor  
Salt Lake City, Utah 84111

John N. Braithwatie  
Plant Wallace  
Attorney for Third Party Defendant  
136 East South Temple, #1700  
Salt Lake City, Utah 84111

A handwritten signature in black ink, appearing to read "John N. Braithwatie", is written over a horizontal line.

12/09 23:35 FAX

04

*Handwritten signature and initials*

COSBY, ROSEMARY

8/18/95 OV: The patient is a 64-year-old black female with a one month history of an abscess of the left leg. She states this required incision and drainage and aggressive local care. She also relates a problem with hyperglycemia during a perioperative period. Presently, she is receiving whirlpool local wound care with Silvadene and is doing well. She comes in today for possible skin grafting.

Physical examination demonstrates a well-granulating wound bed with active epithelialization along the lateral borders. She still has a superior tract which is non-purulent.

I think at this point the patient can decrease her whirlpool, continue BID Silvadene dressing and continue close follow-up. I anticipate the upper tract to stick down and based on the progression of the wound we might consider split thickness skin grafting. At this point I think that this would be premature.

She will return to see us in one week.

CPC,MD:eb

8/25/95 OV: The patient continues to receive local wound care from her left thigh abscess. She has demonstrated a remarkable decrease in her wound size presently measuring 6x9 cm. She has had a significant decrease in the superior tracking of this wound. The base appears to be excellent granulation tissue, and we will continue her present wound care. We will decrease the frequency of whirlpool to BID and continued TID Silvadene dressing.

CPC,MD:eb

9/1/95 OV: The patient continues to make remarkable progress with the wound to her left thigh. Her wound is contracting significantly and is markedly smaller today. She will continue to perform local wound care and will follow up with us in two weeks.

CPC,MD:km

9/15/95 The patient continues to make remarkable progress. Her wound appears to be clean. She will continue local dress and care. I am concerned however, that we have reached a plateau with wound contraction and she very well would benefit from a split thickness skin graft for further closure of this wound. I will write today for pre-approval and consider this if she does not make significant progression at her next office visit.

CPC,MD:km

9/21/95 Prior approval prepared. CPC,MD:eb

10/12/99 23:35 FAX

005



Foot and Ankle Association  
of Florida  
Medicine and Surgery of the Foot and Ankle

Eugene M. Paschella, D.P.M.  
Robert T. Hoover, II, D.P.M.  
Edward M. Finkelstein, D.P.M.  
Curtis A. Warner, D.P.M.  
Robert J. Estrada, D.P.M.  
Robert F. Linn Jr., D.P.M.

PATIENT'S NAME: CROSBY, ROSEMARY

REFERRING PHYSICIAN:

TREATING PHYSICIAN: ROBERT J. ESTRADA,

10/13/95

INITIAL OFFICE VISIT

CHIEF COMPLAINT: I had the opportunity of seeing this patient complaining of painfully elongated nails and painful arches.

HISTORY OF PRESENT ILLNESS: This 64-year-old African American female complains of pain and discomfort upon ambulation and in all types of shoe gear due to the extremely thick and dystrophic, discolored nails which is extremely tender upon ambulation. She also has some difficulty with plantar pain in her arches which she states are due to her flat feet. She has had no other prior treatment rendered.

PRIMARY PHYSICIAN: Dr. Clifford Clark.

PAST MEDICAL HISTORY: Is positive for a history of abscess on her left leg.

PAST SURGICAL HISTORY: Is positive for incision and drainage of the abscess and removal of cyst on her neck.

ALLERGIES: None.

CURRENT MEDICATIONS: Lasix.

PHYSICAL EXAMINATION: The patient is alert, cooperative and quite pleasant. She reveals +2/4 dorsalis pedis and posterior tibial pulses bilaterally. Capillary refill time of three seconds bilaterally. Neurologically, all epicritic sensations, deep tendon reflexes and muscle strength are within normal limits. The patient reveals positive pain upon palpation of the inferior medial tubercle and medial band of the plantar fascia noted bilaterally. The patient also has severely elongated, dystrophic, discolored and brittle nails 1-5, bilaterally.

IMPRESSION: 1. PLANTAR FASCIITIS, BILATERALLY  
2. ONYCHOMYCOSIS 1-5, BILATERALLY

PLAN: Today, the risks and progression of the above-named deformities were explained to the patient. At this time, we have debrided all nails both manually and electrically to hygienic length per medical necessity. We have dispensed Spectazole 1 percent cream to apply to the affected area daily with

10/12/99 23:38 FAX

008

Crosby, Rosemary - Pg 2

one refill. The patient is to perform contrast soaks twice daily and we have given her a list of instructions. She is to use the pressure off the affected area. She is to call earlier and reappoint to the office in two months if any problems or complications should arise.

Thank you very much for allowing me to participate in this patient's care. I will keep you informed on her continued progress and treatment.

Sincerely,



Robert J. Estrada, D.P.M.

RJE/eg

## ADDENDUM NO. 9

JOHN B. WILSON (3511)  
LAURA S. SCOTT (6649)  
PARSONS BEHLE & LATIMER  
Attorneys for Defendant Chase Manhattan  
Mortgage Corporation  
201 South Main Street, Suite 1800  
Post Office Box 45898  
Salt Lake City, Utah 84145-0898  
Telephone: (801) 532-1234

JUN 11 - 3 PM 3:34  
CLERK OF COURT  
COUNTY  
BY *[Signature]*  
DEPUTY CLERK

IN THE THIRD JUDICIAL DISTRICT COURT  
SALT LAKE COUNTY, STATE OF UTAH

\* \* \* \* \*

ROSALIND CAZARES, as Co-Personal  
Representative of THE ESTATE OF  
ROSEMARY COSBY,

Plaintiff,

vs.

ROBERT C. COSBY, ANNIE L. JOHNSON,  
CHASE MANHATTAN MORTGAGE  
CORPORATION, HEADLANDS HOME  
EQUITY LOAN TRUST, UNITED  
SECURITY FINANCIAL, and JOHN DOES  
1-10,

Defendants.

---

HEADLANDS MORTGAGE COMPANY  
and HEADLAND HOME EQUITY LOAN  
TRUST,

Third Party Plaintiffs,

**DEFENDANT CHASE  
MANHATTAN MORTGAGE  
CORPORATION'S REPLY  
MEMORANDUM IN SUPPORT  
OF MOTION IN LIMINE FILED  
BY DEFENDANTS COSBY,  
JOHNSON, UNITED SECURITY  
FINANCIAL AND WEIR**

Case No. 990902004

Judge William B. Bohling

v.

LINDA WEIR and WESTERN SURETY  
COMPANY,

Third Party Defendants

\* \* \* \* \*

Defendant Chase Manhattan Mortgage Corporation (“Chase Manhattan”) submits the following reply memorandum in support of the Motion in Limine filed by defendants Robert C. Cosby, Annie L. Johnson and United Security Financial and third party defendant Linda Weir (collectively “Defendants”).

### **INTRODUCTION**

As explained in Chase Manhattan’s opening memorandum, the Chase Manhattan Trust Deed at issue in this litigation was “subscribed and sworn to and acknowledged by” Rosemary Cosby (“Rosemary”) and Robert Cosby (“Robert”) on August 18, 1995 before Tarci D. Eastburn, a notary public of the State of Utah. The Chase Manhattan Trust Deed was subsequently recorded in the Salt Lake County Recorder’s Office on August 25, 1995. Thus, Utah law prohibits Plaintiff from presenting any witnesses to challenge the validity of the Chase Manhattan Trust Deed other than Ms. Eastburn, the notary public who acknowledged the Chase Manhattan Trust Deed, unless she is unavailable. (See Utah Code Ann. § § 57-2-10 and 57-2-14 and Defendants’ Memo at 2-4).

In response, Plaintiff argues that Utah Code Ann. § 57-2-1 et seq. permits Plaintiff to offer evidence of her handwriting expert without first establishing that the notary did not subscribe the Chase Manhattan Trust Deed. Plaintiff also argues that an unsigned, unauthenticated “medical record made in the State of Florida” establishes that Rosemary did not sign the Chase Manhattan Trust Deed. As discussed briefly below, these arguments are without merit and the Motion in Limine should be granted.

### **ARGUMENT**

Under Utah law, the object of the subscribing witness’ signing of a deed is to attest that the deed was executed and that the witness is ready to certify to its genuineness. See Tarpey v. Deseret Salt Co., 14 P. 338 (Utah 1887). Utah law “points to the subscribing witness as the first persons to look to in such cases for proof, and the proper ones to furnish proof in the first instance of the due execution of the deed, in all cases when it is attacked, or when its validity is in any manner called into question.” Id. Moreover, a deed that is acknowledged and recorded gives “rise to a presumption of the genuineness and the due execution and delivery of the deed” which must be given “great weight.” Indeed, the effect of such certificate of acknowledgement “will not be overthrown upon a mere preponderance of the evidence, but it must be clear and convincing.” See Northcrest, Inc. v. Walker Bank & Trust Co., 248 P.2d 692 (Utah 1952) (citing 1 C.J.S., Acknowledgments, § 139). Thus, Plaintiff should not be permitted to escape this burden by introducing testimony of her handwriting expert without first establishing through the



testimony of the notaries and by clear and convincing evidence that Rosemary did not appear before the notaries or otherwise acknowledge the deeds in question.

Plaintiff's argument regarding the purported medical record also fails for the same reasons. Putting aside the obvious evidentiary defects of the purported medical record, the medical record does not suggest, much less establish, that the Chase Manhattan Trust Deed was not "subscribed and sworn to and acknowledged by" Rosemary and Robert on August 18, 1995. It is certainly not enough to excuse Plaintiff from complying with the requirements of Utah law regarding proof of the execution of deeds of conveyance of real property.

### CONCLUSION

For the foregoing reasons, the court should grant the Motion in Limine filed by Defendants.

DATED this 2<sup>nd</sup> day of May, 2001.

PARSONS BEHLE & LATIMER



JOHN B. WILSON

LAURA S. SCOTT

Attorneys for Defendant

Chase Manhattan Mortgage Corporation

CERTIFICATE OF SERVICE

I hereby certify that on this 24<sup>th</sup> day of May, 2001, I caused to be mailed, first class, postage prepaid, a true and correct copy of the foregoing **DEFENDANT CHASE MANHATTAN MORTGAGE CORPORATION'S REPLY MEMORANDUM IN SUPPORT OF MOTION IN LIMINE FILED BY DEFENDANTS COSBY, JOHNSON, UNITED SECURITY FINANCIAL AND WEIR**, to:

David E. West  
3441 S Decker Lake Drive  
Salt Lake City, UT 84119

J. Bruce Reading  
Kami L. Peterson  
SCALLEY & READING  
261 E 300 South, Suite 200  
Salt Lake City, UT 84111

Edward M. Garrett  
GARRETT & GARRETT  
2091 East 1300 South, Ste. 201  
Salt Lake City, UT 84108

John N. Braithwaite  
Robert C. Olsen  
PLANT WALLACE CHRISTENSEN & KANELL  
136 E South Temple, #1700  
Salt Lake City, UT 84111

  
\_\_\_\_\_

## **ADDENDUM NO. 10**

J. Bruce Reading (#2700)  
Lisa A. Jones (#5496)  
SCALLEY & READING, P.C.  
Attorneys for Defendants, Cosby, Johnston & United Security  
261 East 300 South, Suite 200  
Salt Lake City, Utah 84111  
Telephone: (801) 531-7870  
Facsimile: (801) 531-7968



---

IN THE THIRD JUDICIAL DISTRICT COURT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

---

ROSALIND CAZARES, as co-personal  
Representative of THE ESTATE OF ROSEMARY  
COSBY,

Plaintiff,

vs.

ROBERT C. COSBY, ANNIE L. JOHNSON, CHASE  
MANHATTAN MORTGAGE COMPANY,  
HEADLANDS MORTGAGE COMPANY,  
HEADLAND HOME EQUITY LOAN TRUST,  
UNITED SECURITY FINANCIAL and JOHN  
DOES 1-10,

Defendants.

---

HEADLANDS MORTGAGE COMPANY and  
HEADLAND HOME EQUITY LOAN TRUST,

Third-Party Plaintiffs,

vs.

LINDA WEIR and WESTERN SURETY  
COMPANY,

Third-Party Defendants.

---

**REPLY TO PLAINTIFF'S RESPONSE  
TO DEFENDANT COSBY'S MOTION  
IN LIMINE**

Civil No. 990902004

Judge William B. Bohling

Defendants, Cosby, Johnson and United Security and Third Party Defendant, Weir, by and through their attorney of record, J. Bruce Reading, offer the following Reply Plaintiff's Response to Motion in Limine.

## ARGUMENT

### **Utah Code Ann. Sections 57-2-10 and 57-2-14 Are Consistent With the Presumption of Genuineness Accorded to Deeds, and Should Apply to the Case at Bar**

Plaintiff, in her response, contends that Utah Code Ann. Sections 57-2-10 and 57-2-14 are inapplicable to the case at bar. Even assuming, *arguendo*, that she is correct, these code sections are consistent with the basic principal that the acknowledgment and recordation of a deed gives rise to a presumption of genuineness. Northcrest, Inc. v. Walker Bank & Trust Co., 248 P.2d 692, 694 (Utah 1952) (holding that the presumption should not be regarded lightly but should be given great weight, and that a certificate of acknowledgment can only be overthrown by clear and convincing evidence). See also Chugg v. Chugg, 342 P.2d 875 (Utah 1959). Utah Code Ann. Sections 57-2-10 and 57-2-14 should thus either apply directly or by analogy as a matter of policy, and no handwriting analysis should be admitted in this case unless the notary's acknowledgment itself can first be thrown into question.

Plaintiff's response focuses on the fact that at the time Rosemary Cosby's signature was attested to by Tarci Eastburn, a notary employed by Equity Title, Rosemary was physically someplace else. The property in question was the primary residence of Rosemary and Robert Cosby from the date of the signing in August of 1995 to the death of Rosemary Cosby in January of 1997.

Chase Manhattan was the mortgage holder on this primary residence and was paid each mortgage payment for each month that Rosemary Cosby lived in the home.

Even, *arguendo*, had the signature been a forgery, which it was not, by paying the mortgage pursuant to the Trust Deed and Note, the signature would have been ratified by Rosemary in eighteen (18) months of house payments. See Lake Philgas Service v. Valley Bank, 845 P.2d 955, 955 (Utah 1993) n.2.

The best evidence of the authenticity of the deed is the notary's testimony that she acknowledged the deed according to Rosemary Cosby's instructions. Unless such testimony is not credible or cannot be offered, other extrinsic evidence would not be helpful to challenge the authenticity of the document. Expert handwriting analysis would not, by itself, constitute clear and convincing proof of forgery in the face of a presumptively valid deed.

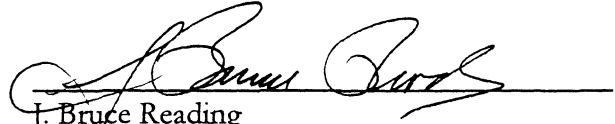
Moreover, even if Plaintiff can show that Rosemary Cosby was in Florida on the date in question, the deed was acknowledged according to Ms. Cosby's instructions and should be presumed valid. The notary in this case is available to testify that she acknowledged the deed at Ms. Cosby's request. Her affidavit to this effect is appended to this Reply Memorandum.

### **CONCLUSION**

For the foregoing reasons, and for those reasons offered in Defendants' original Memorandum, Defendant requests that no evidence of the handwriting of Rosemary Cosby be admitted other than the testimony of the notary who acknowledged the Deed, unless Plaintiffs can show that she is unavailable or her testimony does not support the Deed's authenticity, or is not credible.

DATED this 7 day of May, 2001.

SCALLEY & READING, P.C.

  
J. Bruce Reading  
Attorney for Defendants/Third Party  
Defendants

**MAILING CERTIFICATE**

I hereby certify that I mailed, postage prepaid, a true and exact copy of the foregoing

**REPLY TO PLAINTIFF'S RESPONSE TO DEFENDANT COSBY'S MOTION IN**

**LIMINE** to the following party on the 7<sup>th</sup> day of May 2001:

John B. Wilson  
Laura S. Scott  
Parsons Behle & Latimer  
Attorneys for Chase Manhattan  
201 South Main Street #1800  
Salt Lake City, Utah 84145-0898

David E. West  
Attorney for Headlands  
3441 South Decker Lake Drive  
Salt Lake City, Utah 84119

Edward M. Garrett  
Garrett & Garrett  
Attorney for Plaintiff  
2091 East 1300 South #201  
Salt Lake City, Utah 84108

John N. Braithwaite  
Plant Wallace  
Attorney for Third Party Defendant  
136 E. S. Temple, #1700  
Salt Lake City, Utah 84111

